No. 11100

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD J. STEEVES, HUGO CALGAN, WILLIAM A. PORTER and SAMUEL S. TAYLOR,
Appellants,

vs.

AMERICAN MAIL LINE, LTD., a corporation,
Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

BRIEF OF APPELLANTS

SAM L. LEVINSON,
Proctor for Appellants.
1602 Northern Life Tower,
Seattle 1, Washington.

No. 11100

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD J. STEEVES, HUGO CALGAN, WILLIAM A. PORTER and SAMUEL S. TAYLOR,
Appellants,

vs.

AMERICAN MAIL LINE, LTD., a corporation,
Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

BRIEF OF APPELLANTS

SAM L. LEVINSON,
Proctor for Appellants.
1602 Northern Life Tower,
Seattle 1, Washington.

INDEX

TABLE OF CASES

TEXTBOOKS

STATUTES

No. 11100

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD J. STEEVES, HUGO CALGAN, WILLIAM A. PORTER and SAMUEL S. TAYLOR,
Appellants,

vs.

AMERICAN MAIL LINE, LTD., a corporation,
Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

BRIEF OF APPELLANTS

STATEMENT OF JURISDICTION

This is an appeal from the decree of the United States District Court for the Western District of Washington, Northern Division, sitting in Admiralty. This action was instituted by the filing of a libel in personam (Aps. 2) by Edward J. Steeves, Hugo Calgan, William A. Porter and Samuel S. Taylor, seamen on the SS Capillo, libelants, against the American Mail Line, a corporation, owners and operators of the

vessel, respondent. This action, of a maritime nature, is properly brought in the United States District Court (28 U.S.C.A. 41(3)). From a final decree (Aps. 50) awarding judgment to libelants in an amount less than that prayed for in the libel, an appeal lies to this court (28 U.S.C.A. 225, 227).

STATEMENT OF THE CASE

This is an action brought by four members of the crew of the S.S. Capillo, operated by the American Mail Line, Ltd., a corporation, to recover war bonus payments as provided in a rider attached to the shipping articles. The libelants seek bonus payments from December 29, 1941, when the vessel was destroyed by Japanese bombs, to December 7, 1943, when the libelants were returned to the United States after being imprisoned by the Japanese.

There are no disputed questions of fact, the parties having stipulated as to the facts (Aps. 81) as follows:

On October 11, 1941, the appellants signed articles as members of the crew of the SS Capillo for a voyage commencing on the Columbia River to Asiatic waters. The articles were in the usual form, designated the employment of each of the crew members and the rate of pay, and contained the following rider:

> "The American Mail Line agrees to pay an emergency war bonus to the crew of the S.S. Capillo, Voyage Six (6), in accordance with the provisions contained in the applicable supplementary agreements in effect between the Pacific American Shipowners' Association and the various Marine Unions.

"In the event the vessel and/or crew be interned, imprisoned, hospitalized or put ashore due to war causes and for that reason, be unable to continue their voyage, the company agrees to pay wages and bonus to the date members of the crew arrive in an United States port, on the Pacific coast; furthermore, the company agrees, in such event, to arrange for repatriation of such men to a United States port on the Pacific Coast. Also, that the company be liable for any injuries suffered by any crew member due to war causes.

"The company agrees to reimburse each man so affected by the amount of $150.00 for each member of the crew, against the loss of personal effects as a result of war perils.

"It is further agreed that in the event of any increase in pay, overtime or war bonus or changes in insurance which may be granted, as the result of negotiations between Union and the Pacific American Shipowners' Association, the Company will be governed by the terms and effective date of any agreement so reached."

The ship left the Columbia River on October 17, 1941 (Aps. 156) proceeding to Manila, and crossed the 180th Meridian, westbound, on the 2nd day of November, 1941, and arrived in Manila on December 1, 1941. On December 29, 1941, the vessel was destroyed as the result of bombing by enemy planes, and all members of the crew, including the libelants, were interned and imprisoned by the Japanese.

Subsequently the libelants were exchanged as prisoners of war and were repatriated on the MS Gripsholm, arriving at New York, on December 1, 1943. Upon arrival the men were paid their wages during

the entire period up to the date of the arrival of the vessel. They were paid a war bonus from the time the vessel crossed the 180th Meridian, westbound, November 2, 1941, to the date the vessel was sunk in Manila Harbor, December 29, 1941. They were not paid any war bonus for any period during which they were interned or in prison camps, nor for any portion of the homeward voyage.

It was stipulated that if the libelants were entitled to recover, each is entitled to a bonus at the rate of $80.00 per month. It was further stipulated if the libelants were entitled to transportation from New York to the Pacific Coast, the value of such transportation would be $125.00.

Upon the statement of the foregoing facts and the entry of the sitpulation, the appellants rested (Aps. 83), and the respondent introduced evidence in support of its case.

Respondent called A. R. Lintner, its vice-president and general manager, who testified that for several years prior to the summer of 1941 (Aps. 87-89), because of unsettled conditions, war and threats of war, the seagoing personnel were uneasy about the risks involved, and various maritime unions insisted upon certain compensation for these risks. The negotiations on this matter were conducted between the Maritime unions and individual companies. In the spring of 1941, these negotiations were instituted on an industry-wide basis, the Pacific American Shipowners Association acting for the vessel owners, including the respondent, and the various maritime unions appearing for the crew members (Aps. 90). The witness

identified respondent's Exhibit A-1, which was a statement of the amount paid to each of the libelants, which was admitted without objection (Aps. 97), and that there was no bonus paid for the period of internment. He did not see the rider involved until after the controversy arose. At the time the men signed on, the vessel was anxious to get a crew for the contemplated voyage (Aps. 102).

W. L. Williams, district manager of the respondent in the Columbia River District was called and testified and identified the shipping articles (Resp. Ex. A-2), which were admitted without objection (Aps. 105), and which contained the rider involved in the proceedings. He testified the rider was used upon the suggestion of the maritime unions at the time the respondent started to sign the crew (Aps. 110). At that time there were contracts in effect between the Pacific American Shipowners Association, representing the respondent, among others, and the unions, covering wages, hours and conditions which from time to time were subject to modification (Aps. 110). During the summer of 1941, negotiations were pending between the employers and the unions (Aps. 111) and there was considerable confusion within the industry concerning war bonus. At that time it was generally known that a supplemental agreement was being negotiated, principally to determine the payment of war bonus. The results of these pending negotiations were unknown to the witness, and the members of the crew at the time the articles in question were signed on October 11, 1941.

Williams identified the supplemental agreement,

dated October 9, 1941, between the Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association and the Pacific American Steamship Owners Association (Ex. A-3), which was admitted without objection (Aps. 114). The libelants Steeves, Calgan and Porter, being firemen and watertenders on the vessel, were members of the Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association.

The witness then identified respondent's Exhibit A-4, which was the Supplemental Agreement dated October 10, 1941, between the Marine Cooks & Stewards Association and the Pacific American Shipowners Association, which was also admitted without objection (Aps. 119). The libelant Taylor was a member of the Marine Cooks and Stewards Association. Exhibits A-3 and A-4 are the applicable supplemental agreements referred to in the first paragraph of rider in the articles.

Exhibit A-3 (Aps. 114), the firemen's agreement, defined five war risk zones, the fourth being a trans-Pacific voyage, and provided for the payment of a bonus at the rate of $80.00 per month from the crossing of the 180th Meridian, westbound, until the crossing of the same meridian, eastbound. This agreement had no provisions concerning the payment of wages or bonus in the event of the loss of the vessel or internment or imprisonment of members of the crew, or for war risk insurance.

Exhibit A-4 (Aps. 199), the Marine Cooks and Stewards' agreement, while defining the same war risk zones and the same rates of compensation and war bonuses, provided in addition for a war risk in-

surance in the sum of $5000.00 for the members of the crew. It also set forth that in the event of the loss of the vessel or its internment, the basic wages and emergency wages were to be paid to the members of the crew until their arrival at a continental United States port. War bonuses were to be paid while the employees were in the war zones defined in the agreement (Aps. 124).

Exhibit A-3 has no provision concerning its retroactive application, while Exhibit A-4, Par. 6, the Marine Cooks and Stewards agreement, provides that the agreement shall be effective on all voyages where shipping articles were entered into on or after August 16, 1941, or upon any voyage to which the provisions in the agreement are made applicable by special agreement or rider attached to the shipping articles (Aps. 124). Both agreements specifically refer to the proceedings before the National Defense Mediation Board and its published recommendations for bonuses for war risk and specifically adopt such recommendations, and in pursuance thereto entered into the specific arrangements set forth in the agreements. It is noted that the recommendations of themselves have no force and are only the basis of the actual agreement.

It was the contention of the appellants before the court, and it is here, that the rider in the shipping articles and the reference to the supplemental agreement to determine the *rate* of payment constituted the complete contract between the crew and the respondent, and the intention of the parties could be ascertained by these documents alone. It was the

position of the respondent at the trial below that the intention of the parties could not be ascertained from these agreements, and that it was necessary that all prior negotiations and contracts throughout the entire maritime industry on both coasts should be before th court in order to ascertain the meaning of the contract of employment between the libelants and the respondent, and that the libelants were thereby bound by subsequent modifications and changes in the agreement as determined by the later decisions of the Maritime War Emergency Board, which came into being after the articles were signed. All of these offers of evidence were objected to by the appellants.

While the trial court was originally of the opinion that the only question was the authority granted by the libelants to some agent for subsequent modification of the agreement (Aps. 94, 96), and was doubtful on the point of the admissibility of the documents and proffered evidence at the time they were offered, it reserved ruling thereon upon the statement of respondent's counsel he would show such authority (Aps. 96).

At the close of the case, the court was then of the opinion (Aps. 208) that the contract was "clouded with considerable obscurity and attended with intricate ramifications and unfamiliar conditions," and that the exhibits and proffered evidence shed light upon the subject, and admitted them all, with the exception of Exhibit A-13, pages from the Monthly Labor Review, published by the United States Department of Commerce, which discusses the matter of war bonus to sailors during the war (Aps. 139).

The documents and evidence admitted by the court over the objection of the appellants were as follows:

Respondent's Exhibit K (Aps. 199-206) was a document entitled "Statement of Principles," which was adopted at a conference of representatives of steamship companies and maritime unions held in Washington, D. C., on December 19, 1941, three weeks after the libelants had arrived in Manila and twelve days after the commencement of the war. This exhibit contained a preamble that it was desirable and necessary that a uniform basis of war bonus and insurance covering the entire maritime industry be reached, and that maritime labor would not strike during the war, and the steamship companies would have no lock-out. It further provided that all agreements and obligations arising out of collective bargaining agreements would in no way be violated, and set up machinery for the settlement of disputes without interruption of service or stoppage of work during the war. This machinery provided for the creation of a proposed Maritime War Emergency Board, and set forth its powers in Exhibit A attached to this Exhibit K.

Exhibit A to Exhibit K, dated the following day, December 18, 1941 (Aps. 200) provides that the unions and the vessel operators, having pledged themselves to cooperate in the war effort and to insure that questions that may arise which were likely to interrupt the war effort would be settled promptly, it was proposed that there should be established a board known as the Maritime War Emergency Board. When any difference should arise (Aps. 202) between any

steamship operator and any union representing its employees, and such question should not be settled through the ordinary procedure of collective bargaining, such question shall be referred to the Board by such steamship operator or union by giving written notice to the Board and to the other party, which shall specify the question to be referred to the Board. Upon the receipt of such notice, the Board shall give each party an opportunity to present evidence and argument, and thereafter render its decision (Aps. 203), which shall be final upon all parties to the difference out of which the question arose (Aps. 203). Attached to Exhibit K was a letter from the President, dated December 19, 1941, appointing the personnel of the Board (Aps. 205).

Respondent's Exhibit A-5 (Aps. 259 to 264) was the supplementary agreement dated October 10, 1941, between the Masters, Mates & Pilots Association, representing the licensed deck officers, and the Pacific American Shipowners Association. This agreement, while setting forth the bonus rates to be paid to the members of the union involved, was objected to on the ground of immateriality, as none of the libelants are members of this union.

Respondent's Exhibit A-6 is exactly the same in substance as Respondent's Exhibit A-5, except that this agreement bears date of October 15, 1941, and is between the Marine Engineers Beneficial Association, the licensed engine room officers, and the Pacific American Shipowners Association. For the foregoing reason it is stipulated (Aps. 73) that only the opening preamble, showing the date and the signatures

appear in the record (Aps. 265). The introduction of this exhibit was objected to on the ground of its immateriality because none of the libelants are members of the Marine Engineers Beneficial Association.

Respondent's Exhibit A-7 was an agreement dated October 16, 1941, between the American Communications Association, Marine Division (the radio operators) and the Pacific American Shipowners Association, and was the same as respondent's Exhibit A-5, except as to parties. The opening paragraph and signatures appear in the record (Aps. 266). The materiality of this agreement was challenged by the appellants because none of the libelants were members of the association involved.

Respondent's Exhibit A-8 is the same as respondent's Exhibit A-5, except that it is dated October 9, 1941, and is between the Sailors' Union of the Pacific and the Pacific American Shipowners Association, and has a different preamble describing the expiration of prior contracts (Aps. 267). Appellants objected to the introduction of this exhibit upon the ground that it was not material to any of the issues because none of the libelants were members of this union.

Respondent's Exhibit A-10 is a copy of the Maritime War Emergency Board Decision No. 2, issued in Washington, and dated January 10, 1942, twelve days after the vessel had been destroyed at Manila and the men had been interned. This exhibit (Aps. 270-279) and its attachments, set forth the classification of the six bonus areas and the rate of bonus applicable. It also made provision for the payment of certain port

bonus throughout the world and gave examples of the method of ascertaining the bonuses to be paid on the voyages set forth in the classification. Nothing appears in this exhibit concerning the payment of bonus during internment. Appellants objected to its materiality, but their objections were overruled.

While Exhibit A-11 precedes Exhibit A-12 in enumeration, Exhibit A-12 precedes Exhibit A-11 in dating, and we shall, therefore, first refer to Exhibit A-12.

Respondent's Exhibit A-12 (Aps. 287-297) is Maritime War Emergency Board Decision No. 5, dated February 17, 1942, issued at Washington, D. C., with supplements and amendments. Decision No. 5 sets forth the procedure whereby the owner or an operator of a vessel sunk by enemy action shall pay to the seaman, or his dependents, wages and allotments during the internment of the seaman. The supplement to Decision No. 5 provides that the decision is retroactive to December 7, 1941, and makes a further provision for the payment of wages to the seaman through the medium of the American Red Cross in the event of internment. The amendment to Decision No. 5, dated February 17, 1942, sets forth that the Board has now given consideration to the continuance of bonus in the case of the destruction of the vessel, which subject was not covered by Decision No. 5, and adds a number of provisions to Decision No. 5 covering this question, designating the same as Article No. 6, and provides for the payment of a war bonus at the rate which prevailed immediately before the loss of the vessel until the seaman arrives at a port where he is no

longer exposed to a marine peril; provides (Aps. 296) further that if internment does not follow the loss of a ship, the seaman shall receive no bonus while at a safe port awaiting repatriation. This exhibit provides, however, that its *provisions shall be retroactive to December 7, 1941, and shall be applicable only when there was no agreement with respect to the making of bonus payments provided for or contained in ship's articles entered into on or before February, 1942* (Aps. 296). Appellants objected to the introduction of this exhibit because of its immateriality in that it was issued subsequent to the signing of the articles and by the terms of the exhibit itself; in that the subject matter *was* covered by an agreement between the ship operators and the libelants. Also, by the terms of Exhibit A-11, Exhibit A-12 was superseded and had no force and effect.

Respondent's Exhibit No. A-11 was admitted in evidence and is set out in full (Aps. 280). This was Decision No. 5 Revised of the Maritime War Emergency Board, issued February 21, 1942, and sets forth in its preamble that it is to be considered as a consolidation of Decision No. 5, its supplements and amendments (heretofore referred to as Respondent's Exhibit A-12), with the request that all persons in possession of Decision No. 5 and supplement "destroy the issue and the supplement thereto." (Obviously the American Mail Line, Ltd., as one of the signatories to the Statement of Principles, did not follow this admonition of the Maritime War Emergency Board.)

This Revised Decision No. 5 set forth the new pro-

cedure whereby the operators of the vessel shall pay the dependents of seamen the amount of their allotment during the internment of the seaman and substantially follows the procedure set forth in Exhibit A-12 with reference to the payment of wages, providing similarly that the war bonus shall continue from the time of the loss of the vessel (Aps. 286) until the seaman arrives at a port where he is no longer exposed to marine perils, and further provides that if internment does not follow the loss of a ship, the seaman shall receive no bonus while at a safe port awaiting repatriation. The decision also provides that it is retroactive to December 7, 1941, *in all cases where there was no agreement with respect to the payments provided for or contained in the ship's articles entered into on or before January 23, 1942, with respect to the payment of bonus during internment, or where the making of such payment was expressly left open subject to a later agreement* either in the ship's articles or collective bargaining agreements (Aps. 281). The objection to the admission of this exhibit upon the ground of its immaterialty because it was issued subsequent to the date of the signing of the articles, and because by the terms of the exhibit itself it was not applicable where the subject matter was covered by agreement between the libelants and the respondent was overruled. Exhibits A-5 to A-12 inclusive were all admitted over appellant's objection (Aps. 258).

The respondent also offered in evidence over the appellants' objection (Aps. 159) the testimony of William G. Mullins, which was taken by deposition

November 3, 1944, in New York. Mullins testified that he was the director of the Labor Relations Bureau of the American Merchant Marine Institute, a trade association composed of American steamship companies (Aps. 166). The respondent American Mail Line was not a member of this institute. Mullins testified concerning the negotiations on behalf of the members of his institute and the various maritime unions of the east coast (Aps. 163). None of the unions referred to had any connection with any of the appellants. He also testified concerning a conference which was called by the War Shipping Administration in Washington, D. C., to which were invited the various steamship owners associations of the United States, including the Pacific American Shipowners Association. An invitation was also extended to the unions representing the licensed personel. The meeting was held in Washington on the 12th of August, 1941, which resulted in an agreement signed by the representatives of the licensed officers' unions present, The Masters, Mates and Pilots Association and Marine Engineers Beneficial Association and by the representatives of the steamship companies.

The demands made by the representatives of the licensed personnel to that conference were identified and offered in evidence as respondent's Exhibit A, and admitted over the objections of the appellants (Aps. 209). This exhibit was a written proposal submitted to the conference by the two unions representing the licensed personnel as to what they thought would be a fair and equitable compensation to be paid

for the various voyages into war waters, and what they felt should be carried by way of war risk insurance.

Respondent then offered in evidence Exhibit B, identified in the deposition of Mullins, which was an agreement between the licensed personnel unions and the shipowners, dated August 16, 1941 (Aps. 213), in which the various war areas were defined and the rate of compensation set forth, as well as the machinery for future adjustment. The agreement also provided for a reexamination of the facts at the expiration of thirty days from the date of its execution by the Department of Labor and the United States Maritime Commission, and if it was determined that inequities existed detrimental to the licensed officers as compared to the other groups employed on the vessel (the unlicensed personnel), joint recommendations would be made by the Department of Labor and the United States Maritime Commission for the correction of such inequities as were found to exist (Aps. 216). Exhibit B also included a copy of a letter from Admiral Land to Frank J. Taylor, President of the American Merchant Marine Institute, Inc., dated July 22, 1941 (Aps. 219), which constituted the formal invitation to the conference. The exhibit further included a form letter (Aps. 168) sent to individual steamship companies by Admiral Land, advising them of the conference and asking them to attend. The opening remarks of Commissioner McCauley at this conference were also deemed by the respondent to meet the requirement of the rules of relevancy and materiality to the issues involved in

this proceeding as to be offered as a part of this exhibit. Over the objection of the libelants that the entire exhibit had no relevancy whatever to the issues involved in this proceeding because they antedated the agreement which is the subject matter of the controsy, and further that these proceedings concerned unions to which the libelants owed no obligation whatever and could not and did not represent the libelants, the exhibit was admitted in evidence (Aps. 209).

The court also admitted in evidence respondent's Exhibit A (Aps. 223). The witness Mullins identified this exhibit as a circular letter (Aps. 169) dated August 18, 1941, addressed to all of the members of the American Merchant Marine Institute (with which the respondent had no connection), advising them of the results of the meetings with the Masters, Mates & Pilots Association and the Marine Engineers Beneficial Association, and of the negotiations and agreements entered into between these associations and the American Merchant Marine Institute. The appellants' objections to the relevancy and materiality of this exhibit were overruled (Aps. 209).

Mullins further testified concerning the last paragraph of Exhibit C, in which it is stated that the conferences would continue, beginning August 19th, 1941, for the unlicensed personnel. At that time the representatives of the Seafarers' International Union (which does not represent any of the appellants), expressed themselves as dissatisfied with the kind of agreement entered into on August 16, 1941, and of their desire to negotiate separately with the companies with whom they had collective bargaining

agreements (Aps. 170), and that subsequent negotiations did take place.

Mullins further testified (Aps. 170) that on September 22, 1941, another conference was called by telegraphic request from Admiral Land to Mr. F. A. Taylor, President of the Institute (Aps. 171). Apparently it was never held. Shortly after the receipt of the telegram calling the conference, a dispute between the Seafarers International Union and the companies with which it was negotiating was certified to the National Defense Mediation Board. (The respondent American Mail Line was not one of the companies.) A hearing was had by the Board on this certification and the decision was handed down, identified as Decision No. 80, and offered in evidence in this proceeding as respondent's Exhibit D (Aps. 172) and admitted by the court (Aps. 209).

Respondent's Exhibit D was a copy of the decision of the National Defense Mediation Board (Aps. 226) and followed hearings which were held September 29 and October 1, 2, 3, and 4, 1941. The date which this decision was handed down does not appear in the record. This decision set forth certain recommended bonus rates for defined war areas. Mr. Mullins further testified (Aps. 172) that the copy offered in evidence was not a true copy in that it did not contain a statement on the original in his file that the representatives of the shipowners agreed to urge those whom they represented to accept these recommendations, and that the representatives of the Sailors Union of the Pacific agreed to urge those that they represented to accept its recommendations, and the representa-

tives of th Seafarers International Union, though not fully in accord with the recommendations, agreed to carry them back to the union membership and explain to them why they should accept it (Aps. 173).

Respondent's Exhibit "D" also contained the provision (Aps. 231) that nothing in the recommendations should be so interpreted as to reduce benefits now existing under collective bargaining contracts. There is not a word in this exhibit relating to the payment of war bonus during internment. Appellants' challenge that this exhibit had absolutely no materiality or relevancy and did not concern any of the parties to this case at bar was overruled and the exhibit was admitted (Aps. 209).

Mullins further testified (Aps. 174) that commencing in September, 1941, the Institute, on behalf of some 23 or 24 of its member companies (in which the respondent was not represented) was in negotiation with the National Maritime Union for the renewal of current collective bargaining agreements. (The National Maritime Union, an east coast union, is a bitter opponent of the west coast unions). These negotiations culminated in an agreement dated November 6, 1941, after the vessel on which the libelants were employed had been at sea for some nineteen days. This resulted in the development of a standard form of contract signed by all of the member companies of the institute which had recognized the NMU as the agent for collective bargaining for their unlicensed personnel (Aps. 175).

This standard form of contract was identified as respondent's Exhibit E (Aps. 231), and although the

appellants again objected concerning the relevancy of this document signed after the rider to the articles in question, and between parties who had no connection with any of the parties interested in this litigation, the objection was overruled and the document was admitted (Aps. 209).

Mullins further testified that there was a further supplemental agreement entered into between the National Maritime Union and various companies, members of the Institute, which was negotiated on December 2, 1941, relating to bonus for a voyage to Russia (Aps. 176). This exhibit is in blank form and set out on page 236 of the Apostles on Appeal, and was identified as respondent's Exhibit F, and despite continued objections by appellants concerning its materiality and relevancy the same was admitted in evidence by the courts (Aps. 209).

Under questioning by counsel for respondent, Mullins testified that the National Maritime Union agreements remained in effect until the establishment of the first Maritime War Emergency Board. Respondent's Exhibit B (Aps. 176), the agreement with the licensed officers, was subsequently superseded by the agreements heretofore referred to as Exhibits A-5 and A-6, although Mullin testified there was no other agreement (Aps. 178), only some recommendations by the commission.

Mullins also testified concerning the negotiations between his Institute and the American Communications Association, which never materialized in a contract (Aps. 178) until after the matter was referred

to an arbitrator named by the United States Department of Labor (Aps. 179) in February, 1942.

This witness also brought out the fact that the NMU is a union which represents all departments of unlicensed personnel on the vessels on the Atlantic coast (Aps. 180), and although the Seafarers International Union represented some of the unlicensed personnel, no agreement existed between the American Merchant Marine Institute and the Seafarers International Union covering war bonus in the fall of 1941.

The witness Mullins discussed the exhibits heretofore identified in his deposition (Aps. 181) and brought out the fact that there were some differences in some of the contracts prior to the fall of 1941 (Aps. 181) concerning payment of bonus during internment and the contracts were not standardized as far as the Atlantic and the Gulf were concerned for the licensed personnel until August, 1941, and for the unlicensed personnel until November and December, 1941. He thought that his association and negotiations set the pattern, generally speaking, for the labor agreements on the Atlantic and Pacific Coast (Aps. 182), and testified concerning his meaning of the words emergency compensation and war bonus (Aps. 184, 185). Appellants objected to all of the testimony of the witness Mullins, which objection was overruled and the court admitted this testimony (Aps. 159).

J. B. Bryan testified on behalf of respondent in the form of answers to written interrogatories to which the appellants objected (Aps. 159) upon the

ground the questions and answers were not material. His testimony was that the Pacific American Shipowners Association of which he was president was formed in 1936, and acted in labor relation matters with seafaring unions; that commencing in 1939 collective bargaining agreements contained certain war bonus provisions; that confusion arose because of separate agreements entered into by various companies and rivalry between Pacific and Atlantic unions (Aps. 189), resulting in a series of conferences held in Washington, D. C., where uniform agreement for licensed and unlicensed personnel was entered into.

The witness Bryan participated in these negotiations. He identified written demands made by two unions, Exhibit G (Aps. 242). He also identified and testified to counter-proposals, dated August 12, 1941, made by the Pacific American Shipowners Association and the American Merchants Marine Institute to the demands of the two unions representing the licensed personnel. This exhibit was admitted in evidence over libelants' objection (Aps. 241).

The Pacific Coast Marine Firemen, Oilers & Watertenders Association also made a proposal as to what they considered fair on the question of war bonus, and this proposal was dated September 15, 1941 (Aps. 244), and this proposal was identified as respondent's exhibit H, and admitted over libelants' objection. The witness Bryan also identified respondent's Exhibit I (Aps. 250), which was the proposal submitted by the Sailors Union of the Pacific, dated September 16, 1941, supported by the reasons which that organization felt should prevail. This was also

admitted (Aps. 241) over appellants' objections as to the materiality. Finally, he identified respondent's Exhibit J (Aps. 255), which was a letter written by S. J. Hogan, president of the National Marine Engineers' Beneficial Association, under date of October 24, 1941, directed to Frank J. Taylor, President of the American Merchant Marine Institute and calling Mr. Taylor's attention to the fact that the August 16, 1941, war risk agreement with his organization, entered into on the Pacific Coast, and the supplemental agreement (A-6) were not alike. Although the appellants had great difficulty in seeing the materiality of such a document to the issues involved in the case at bar, and called the same to the court's attention by appropriate objection, it was admitted in evidence (Aps. 241).

The witness Bryan also identified the same documents testified to by the witness Mullins in his deposition, the demands made by the Radio Operators Association, the demands made by the Sailors Union of the Pacific, and the hearing in Case No. 80 before the National Defense Mediation Board, which hearing was held in October, 1941. He identified the dates upon which the supplementary agreements were entered into between the Pacific Shipowners Association and the six unions representing the sea-going personnel (Respondent's Exhibits A-3, A-4, A-5, A-6, A-7 and A-8). He was also interrogated concerning certain communications between his association and the American Merchant Marine Institute concerning the language in the contracts and fortunately, from the standpoint of the record, could testify to no other

communications other than Exhibit J, which had theretofore been introduced.

This witness also testified that there had never been any protest to his knowledge (Aps. 198) from either his association, the American Merchant Marine Institute, or any of the six Pacific Coast maritime unions to the Maritime War Emergency Board protesting or criticizing the action of the Board in adopting the rule laid down in Article 6 of Decision No. 5, Revised, of Maritime War Emergency Board, dated February 21, 1942, limiting the period of the payment of war bonus. This was introduced by the respondent apparently to show that there was no protest by the appellants, who at the time the decision was announced, had already been prisoners of the Japanese in some prison camp in the Orient for approximately two months and remained such prisoners until repatriated.

The Court announced its decision (Aps. 32) that it could not ascertain the intention of the parties without reference to all of the evidence admitted, and concluded that because the unions to which the libelants were members approved the Statement of Principles (Resp. Ex. K), that the action of the unions in subscribing to this Statement of Principles constituted libelants' consent to be bound by the decision of the Maritime War Emergency Board, and therefore followed the rulings of that board in not allowing a war bonus during internment, despite the provision of the shipping articles. Findings of fact and decree in accordance with the decision was entered. This appeal followed.

SPECIFICATIONS OF ERROR RELIED UPON

The cause of action set forth in the libel is based on written shipping articles executed October 11, 1941, between respondent and appellants. The articles contain a rider which provides for the payment of war bonus in accordance with the applicable supplementary agreements, during internment of the crew. Three of the appellants being members of the Pacific Coast Firemen, Oilers, Watertenders & Wipers Association, the applicable supplemental agreement is Exhibit A-3, dated October 9, 1941. The remaining appellant, being a member of the Pacific Coast Marine Cooks and Stewards Association, the applicable supplemental agreement is Exhibit A-4, dated October 10, 1941. By these supplemental agreements the bonus rate is $80.00 per month.

Evidence of negotiations, conferences and agreements prior to October 11, 1941, are merged into the agreement and are not admissable. Evidence of negotiations, conferences, and agreements, occurring subsequent to October 11, 1941, between unions, of which none of the appellants are members, and shipowners associations of which respondent is not a member, and decisions of administrative boards and tribunals formed after December 7, 1941, with quasi-judicial powers, are not admissible in this proceeding, and are not binding on appellants.

Findings of Fact, Conclusions of Law and the Decree based upon such improper evidence are erroneous. As all of the assigned errors are based upon the admission of evidence over the objection that such evidence is not material or relevant to the issues, and

the findings of fact made in accordance therewith, appellants will discuss them all under one heading.

The specified Assignments of Error relied upon by appellants appear in the record as follows:

Assignments of Error 1 to 10, inclusive (Aps. 54, 55), relating to Findings of Fact III to XII, inclusive (Aps. 37-40).

Assignment of Error 11 (Aps. 55) relating to Conclusions of Law I, II and III (Aps. 49).

Assignments of Error 12 and 13 (Aps. 56) relating to the entry of the Decree (Aps. 50).

Assignment of Error 14 (Aps. 56) relating to the admission, over appellants' objection, of Respondent's Exhibit K (Aps. 199).

Assignment of Error 15 (Aps. 58) relating to the admission, over appellants' objection, of Respondent's Exhibit A-5 (Aps. 259).

Assignment of Error 16 (Aps. 58) relating to the admission, over appellants' objection, of Respondent's Exhibit A-6 (Aps. 265).

Assignment of Error 17 (Aps. 59) relating to the admission, over appellants' objection, of Respondent's Exhibit A-7 (Aps. 266).

Assignment of Error 18 (Aps. 59) relating to the admission, over appellants' objection, of Respondent's Exhibit A-8 (Aps. 266).

Assignment of Error 19 (Aps. 59) relating to the admission, over appellants' objection, of Respondent's Exhibit A-10 (Aps. 270).

Assignment of Error 20 (Aps. 60) relating to the

admission, over appellants' objection, of Respondent's Exhibit A-11 (Aps. 279).

Assignment of Error 21 (Aps. 61) relating to the admission, over appellants' objection, of Respondent's Exhibit A-12 (Aps. 287).

Assignment of Error 22 (Aps. 62) relating to the admission over appellants' objection, of Exhibit "A," Mullins Deposition (Aps. 209).

Assignment of Error 23 (Aps. 63) relating to the admission over appellants' objection, of Exhibit "B," Mullins Deposition (Aps. 213).

Assignment of Error 24 (Aps. 63) relating to the admission, over appellants' objection, of Exhibit "C," Mullins Deposition (Aps. 223).

Assignment of Error 25 (Aps. 64) relating to the admission, over appellants' objection, of Exhibit "D," Mullins Deposition (Aps. 226).

Assignment of Error 26 (Aps. 66) relating to the admission, over appellants' objection, of Exhibit "E," Mullins Deposition (Aps. 231).

Assignment of Error 27 (Aps. 66) relating to the admission, over appellants' objection, of Exhibit "F," Mullins Deposition (Aps. 236).

Assignment of Error 29 (Aps. 67) relating to the admission, over appellants' objection, of Exhibit "G," Bryan Deposition (Aps. 242).

Assignment of Error 30 (Aps. 67) relating to the admission, over appellants' objection, of Exhibit "H," Bryan Deposition (Aps. 244).

Assignment of Error 31 (Aps. 68) relating to the

admission, over appellants' objection, of Exhibit "I," Bryan Deposition (Aps. 250).

Assignment of Error 32 (Aps. 68) relating to the admission, over appellants' objection, of Exhibit "J," Bryan Deposition (Aps. 255).

Assignment of Error 33 (Aps. 69) relating to the admission, over appellants' objection of the testimony of the witness Mullins (Aps. 160-187).

Assignment of Error 34 (Aps. 69) relating to the admission, over appellants' objection, of the testimony of the witness Bryan (Aps. 187-198).

The Assignments of Error relied upon are set forth in full in the Appendix to this brief.

ARGUMENT ON THE ASSIGNMENTS OF ERROR

The cause of action set forth in the libel is based on written shipping articles executed October 11, 1941, between respondent and libelants. The articles contain a rider which provides for the payment of war bonus in accordance with the applicable supplementary agreements during internment. Three of the appellants, being members of the Pacific Coast Firemen, Oilers, Watertenders & Wipers Association, the applicable supplemental agreement is Exhibit A-3, dated October 9, 1941. The remaining appellant, being a member of the Pacific Coast Marine Cooks & Stewards Association, the applicable supplemental agreement is Exhibit A-4, dated October 10, 1941. By the terms of these supplemental agreements, the bonus rate is $80.00 per month. Evidence of negotiations, conferences and agreements prior to October 11, 1941, are merged into the agreement and are not admissable. Evidence of negotiations, conferences, and agreements, occuring subsequent to October 11, 1941, between unions, of which none of the appellants are members, and shipowners associations of which respondent is not a member, and decisions of administrative boards and tribunals formed after December 7, 1941, with quasi-judicial powers, are not admissible in this proceedings, and are not binding on appellants. Findings of fact, conclusions of law and the decree based upon such improper evidence are erroneous.

In the case at bar there are no disputed questions of fact. The libel is a simple action on a contract of employment as evidenced by the shipping articles and the attached rider. The rider, agreed to by respondent and the members of the crew, including the appel-

lants, men of ordinary intelligence, provides (1) for the payment of a war bonus, and reads as follows:

> "The American Mail Line agrees to pay an emergency war bonus to the crew of the SS CAPILLO, Voyage Six (6), in accordance with the provisions contained in the applicable supplementary agreements in effect between the Pacific American Shipowners' Association and the various Marine Unions.",

(2) the possibility of internment or imprisonment as a result of war, and for payment in the event of such contingency and the length of the payment as follows:

> "In the event the vessel and/or crew be interned, imprisoned, hospitalized or put ashore due to war causes and for that reason, be unable to continue their voyage, the company agrees to pay *wages and bonus* to the date members of the crew arrive in an United States port, on the Pacific Coast; furthermore, the company agrees, in such event, to arrange for repatriation of such men to an United States port on the Pacific Coast. Also that the company be liable for any injuries suffered by any crew member due to war causes." (Italics supplied)

The vessel and the crew knew that there were pending negotiations where the question of increase of compensation and war bonus might be considered, and so they covered that by providing:

> "It is further agreed that in the event of any *increase in pay, overtime or war bonus* or changes in insurance which may be granted, as the result of negotiations between Union and the Pacific American Shipowners' Association, the Company will be governed by the terms and ef-

fective date of any agreement so reached." (Italics supplied)

Thus it appears that the only place where the rider is not complete is that portion which relates to the amount of the bonus or the rate at which it is to be paid. In order to determine that, the parties to this agreement referred to the applicable supplemental agreements which were in effect or about to go into effect at that time between unions representing the men and the Pacific American Shipowners' Association. The one covering the three appellants who were members of the engine room crew is Respondent's Exhibit A-3, dated October 9, 1941, between the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association and the Pacific American Shipowners Association. The one covering the other appellant is Respondent's Exhibit A-4, which is the agreement between the Pacific Coast Marine Cooks & Stewards Association and the Pacific American Shipowners Association, dated October 10, 1941.

In the agreement between the Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association and the Pacific American Shipowners Association (Ex. A-3, Aps. 114) the union adopts and makes effective certain recommendations of the National Defense Mediation Board, and agrees on the establishment of five war risk zones, and provides for a war risk bonus at the rate of $80.00 per month on four of these zones, which includes the voyage in question. This supplemental agreement is silent on any question of internment or destruction of the ship due to war causes. This agreement applies to the appellants

Steeves, Calgan and Porter, who were members of the engine room department.

Exhibit A-4, the agreement between the Pacific Coast Marine Cooks & Stewards Union and the Pacific American Shipowners Association, was dated October 10, 1941, and sets forth the same areas and rate of bonus as in Exhibit A-3. However, this agreement has additional provisions which set forth the machinery relating to future adjustments, provides for the carrying of war risk insurance in the sum of $5000.00, and specifically provides for the payment of a war bonus in the event of internment or destruction of the vessel while the employees are in the war zones defined.

It is, therefore, apparent that these two agreements supply the missing data in the articles, that is, the rate of bonus. While Exhibit A-4 affecting one appellant goes further and makes provision for the payment of war bonuses in the event of internment, it is apparent that the parties, having definitely agreed in writing in the rider on the length of time war bonus would be paid in the event of internment, did not intend to vary this portion of the agreement by the incorporation of contrary or other provisions in the supplemental agreements.

> "A written instrument must ordinarily be interpreted to mean what on its face it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense."
>
> 12 Am. Jur. 751.
>
> "Where a contract as a whole discloses a given

intention, they will be interpreted, if possible, so as to be consistent with the general intent."

12 Am. Jur. 774.

The foregoing statements support the fundamental rule that when the parties to an agreement have contracted with reference to a particular situation, the length of time for payment of the war bonus, a reference to another document for another purpose will not defeat such intention.

While it will be admitted that it may be possible to raise some argument on the Marine Cooks & Stewards agreement covering the appellant Taylor in that there was provision both in the rider and the supplementary agreemnt relating to the length of time that war bonus is paid. common experience would indicate that this could not have been the intent of the men in the light of the specific provision in the rider which was known to them when they signed and when the terms of the supplementary agreement were then as yet unknown.

This is particularly true when it is borne in mind that the issues presented in this case are not between the unions as such and the Pacific American Shipowners Association or its representative, but the issues here are between the four members of the crew of the SS CAPILLO and the respondent operator of the vessel. It was the men who had agreed upon the length of time for which the bonus would be paid in the event of internment and that was until the men returned to the Pacific Coast. They had not, however, as yet agreed on the rate, and therefore it was

necessary that they refer to the supplemental agreement to determine the rate.

Here then we have the completed contract. The contract fixed the compensation to be paid for the considered risk arising out of a voyage into war zones and the length of time such compensation was to be paid in the event of a materialization of the hazard, the destruction of the vessel and imprisonment of the crew. The men sailed, leaving the haven of the Pacific Coast waters on October 21, 1941. The men faithfully carried out their duties without complaint and brought the vessel and its cargo into waters which they had good cause to believe, before sailing, would be dangerous and hazardous. They had contracted to do so, and that was all there was to it.

The calculated risk which all parties considered materialized. The ship was attacked, destroyed and the crew was captured by the enemy, and they were imprisoned on December 29, 1941. They became prisoners of war, all normal communication with home was cut off, and the men took what comfort they could while suffering imprisonment from the knowledge and belief that upon their return to the Pacific Coast of the United States, whenever that might be, they would be paid not only their wages for operating the vessel, but the additional compensation of wages and war bonus as partial compensation for the hazards, the suffering and the anguish during long months of imprisonment. These were hazards which the men were not required to assume, and assumed only because the respondent was anxious to secure a crew for this voyage (Lintner, Aps. 102), and to send

the vessel and its cargo into these waters for the payment of such war freight rates as the conditions demanded. These men had no way of knowing that any changes were made or would be made in what they believed would be their pay when they returned to the United States.

Finally came the great day of repatriation, after many heart-breaking delays and postponements, and then when they are at last returned to the soil of the United States, they are met at the dock by a representative of the steamship company for the purpose of payment, and then for the first time they are advised that they will receive their wages while on the vessel and during such time as they were in prison, but that their war bonus, which each libelant believed the respondent had agreed to pay, would not be paid.

The respondent, remaining adamant in its position concerning the payment of war bonus during the period of internment, there was no other alternative but to bring an action on the contract.

Although throughout this discussion the payment has been referred to as 'war bonus," it is nevertheless wages for services performed under extraordinary conditions and must be treated as such.

"War bonuses" are additional wages paid to the crew members to induce them to accept employment. Such bonuses are treated as wages, and are supported by a valid consideration.

> "There can be no question but that the 'so-called' war bonus was additional wages for extra hazardous service. It was awarded as a result of a demand for increased wages, and was paid

> for services rendered, and for nothing else. To call a portion of such wages a 'war bonus' does not alter its essential character."
>
> *Lokos v. Saliaris* (The Leonidas) (C.C.A. 2) 116 F.(2d) 440, 442.

The added risk assumed is a valid consideration. If the vessel becomes unseaworthy during the voyage, a contract for a bonus to induce the seaman to assume the added risk, instead of taking his discharge, rests on a good consideration.

> *The Jacob Luckenbach* (Dt. Ct. La.) 36 F. (2d) 381.

The steamship company agreement to pay crew members extra wages for sailing a vessel from Hampton Roads, to which it returned after leaving the convoy because of unseaworthiness, was valid.

> *The Louise* (D.C. Maryland) 54 F. Supp. 157.

Where the crew signed on a vessel under a 100% bonus arrangement for a trans-Atlantic voyage, and the voyage terminated at South Carolina because of the condition of the vessel, it was held that the seamen were, nevertheless, entitled to their double wages.

> *The Herbert L. Rawding* (D.C. So. Car.) 55 F. Supp. 156, 161.

Despite the attempt of the respondent to treat the war bonus as something other than wages, as a "bonus" or gratuity, it is apparent even from the cross-examination of the witness Mullins (Aps. 186) that the payment of these war bonuses was compensation for the risk which the men assumed by reason of the war hazard.

The position of respondent admits to an attempt to reduce the wages by the incorporation of other agreements. Such attempt is contrary to the satutory provision relating to shipping articles which require that the rate of wages be set forth at the time the men sign on.

46 U.S.C.A. 564.

In interpreting this section of the statute, it has been held that a provision of the shipping articles providing that the wages named were subject to change in accordance with a new schedule to be adopted by the shipowners was held to be invalid as not complying with the statute requiring the articles to state the wages to be paid.

Jones v. United States (D.C. Md.) 284 Fed. 721.

It has also been held that the provision of shipping articles, making any change in working rules or wages retroactive, to be applicable only to the agreement to which the seamen were actually or constructively parties, and not to an arbitrary reduction of wages. If such agreement was a fact, it would be held void because of a lack of mutuality.

The Howick Hall (D.C. La.) 10 F.(2d) 162.

It was respondent's original position that the rider and the supplemental agreements only governed the rights of the parties.

The original libel filed by the appellants alleged (par. 3, Aps. 4) that the bonus rate was increased to $100.00 per month beginning December 7th, 1941, by reason of Decision No. 2 of the Maritime War

Emergency Board dated January 11, 1942, in so far as this decision related to an increase in the bonus under the terms of the last paragraph of the rider, that the crew benefit by the increase of any war bonus as the result of negotiations. Judgment in the original libel was demanded accordingly (par. 5, Libel, Aps. 5). The respondent filed exceptions to the libel on the ground: first, that all reference to the Maritime War Emergency Board Decisions must be stricken as having no application (Aps. 9) and; in the alternative, if it be held by the Court that Decision No. 2 of the Maritime War Emergency Board applied, then Decision No. 5 must also apply.

Respondent urged in its argument on the exceptions, and supported by a brief filed in the court below in support of these exceptions, that

> "The increase in bonus provided by Decision No. 2 was clearly the result of a decision by the Board, who after consideration fixed the amount of bonus payable. It was not the 'result of negotiations.' The last bonus fixed as a result of negotiations was the $80.00 per month provided in the October, 1941, collective bargaining agreements. The Statement of Principles specifically provides that such agreements 'will not be violated' by Board Decisions. The reference to Decision 2 must be stricken."

Although this excerpt from respondent's brief does not appear in the record, we do not believe the respondent will challenge its accuracy, and it is cited only to show respondent's position in its argument on the exceptions.

The exceptions filed by the respondent to the orig-

inal libel were sustained (Aps. 5). No appeal having been taken by the libelants from the court's ruling on the exception, it becomes the law of the case, and an amended libel was filed.

The amended libel eliminated all reference to the Maritime War Emergency Board Decisions, and asked for recovery on behalf of the libelants at the rate set forth in the supplemental agreemnts, those of October 9 and October 10, 1941. Respondent answered (Aps. 22), admitting practically all of the amended libel, except that it was indebted to the libelants.

In the respondent's affirmative defense, it alleged the execution of the articles, the negotiations and the execution of agreements between the Pacific Marine Firemen, Oilers, Watertenders & Wipers and the Marine Cooks and Stewards Association of the Pacific and the Pacific American Shipowners Association on behalf of respondent (Exhibits A-3 and A-4). The answer set forth the definition of the war risk areas as defined in these agreements, referring to the Pacific area as Area 4 (Aps. 28) as all points west of the 180th Meridian. Respondent's answer quoted the provision of the Marine Cooks & Stewards agreement (Ex. A-4, Aps. 29), providing for the payment of the bonus in the case of internment:

> "In the event a vessel is interned, destroyed or or abandoned as a result of war operations and is unable to continue her voyage, * * *. War bonuses at the rates specified in subdivision (b) of paragraph 1 hereof shall be paid while employees are in the war zones defined herein * * *." (Aps. 29)

Respondent's answer sets forth that it paid the war bonus at the rate specified while "the libelants were in the war zone described in paragraph 1(a) of said agreements" (Aps. 30). The later statement is contrary to the stipulated facts, as the men were paid their war bonuses only up to the time of the destruction of the vessel, December 29, 1941, although there is no question but that the men subsequently remained in the area. This point is discussed in more detail hereafter.

There is nothing in the respondent's answer by way of affirmative defense that has any reference to any of the decisions of the Maritime War Emergency Board, or in any way alleges or charges that there was any authority on behalf of any person or organization to modify the agreements as set forth in the shipping articles. The substance of the answer simply sets forth the agreement as being made up of the shipping articles and the applicable supplemental agreements and full performance by respondent.

Under these pleadings the issue seems simple—so simple, in fact, that the libelants moved for judgment on the pleadings, in so far as it was admitted by the respondent in open court that the men were paid their war bonus only up to the date of the destruction of the vessel, and as to this fact there was no dispute, which motion was denied. The trial proceeded on these issues, and at the trial, as hereinabove set forth, respondent offered all of the evidence relating to negotiations prior and subsequent to the date of the articles in question, and the supplemental agreements, although there was absolutely nothing in the plead-

ings about any modification of the agreement as set forth in respondent's answer or any claim of ambiguity.

Even the witness Lintner, general manager of respondent, understood that the rider was to be interpreted and determined by the results of the negotiations which were under way at the time (Aps. 98). These are the admitted agreements. Lintner did not mean and said nothing about the M.W.E.B. decisions upon which the court decided the case.

Appellants objected strenuously to the introduction of all of this evidence upon the ground that it had no materiality. The court permitted its identification upon the promise by the respondent that it would be tied up and its materiality and relationship shown, and later admitted it all.

In an attempt to consider this mass of evidence and to follow the theory of the respondent, the court became confused, and finally admitted its confusion by stating:

> "This is one of the most involved cases I ever saw. That is a condition resulting directly from the war situation and from the desire of citizens, particularly those connected with the maritime industry, to cooperate with the war effort, even to the exclusion of their clear understanding of employer-employee relations.
>
> "It is the opinion of the court, however, that this case may be solved within the principles of contract law." (Aps. 32, 33)

The court then completely abandoned these principles, when it stated that to ascertain the intention of the parties from the articles and the two supple-

mental agreements, it was necessary to add the explanatory matter contained in the other evidence received by the court (Aps. 33).

The court wholly overlooked the provision in the rider signed by the men relating to the payment of bonus during internment, a specific provision covering a specific situation. It further overlooked the fact that in the first supplemental agreement, Exhibit A-3, the one covering the engine room personnel, the appellants Steeves, Calgan and Porter, that there was no provision whatever relating to the payment of bonus during internment. Further, the court assumed the fact that in the Marine Cooks & Stewards the payment of bonus during internment, the paragraph set forth in respondent's answer applied to both agreements—when in fact it was not the case. Respondent urged that the payments are limited to a "voyage."

This paragraph provided for the payment of a bonus to the men while in the war zone. Nothing is said about any voyage; nothing said about any services on the vessel. It simply provided that in the event of destruction of the vessel or the abandonment of the voyage, not only basic wages and emergency wages were to be paid, but war bonus was to be paid to the employees while they were in the war zones defined (Aps. 124). There is no dispute that during all of the period of their internment, until the men were homeward bound on the SS GRIPSHOLM and crossed the 180th Meridian, the men were continuously west of the 180th Meridian, placing them in the defined war zone.

By way of answer to the question which was in the court's mind concerning the authority conferred by the appellants to any person to modify or change their agreement subsequent to their signing of the articles, the court concluded that the various maritime unions had authority to act for the appellants and therefore could later modify the individual agreements; that these unions, by subscribing to the Statement of Principles (Ex. K), consented to be bound by the Decision of the Maritime War Emergency Board and thereby bound appellants. It is very difficult to understand how the court could arrive at this conclusion, because the Statement of Principles itself (Aps. 199), upon which the court based this conclusion, contained the following provision:

> "It is understood and agreed that all rights guaranteed to labor and industry with respect to collective bargaining will be retained and *all agreements and obligations arising as a result of collective bargaining agreements will in no way be violated.*" (Aps. 200) (Italics supplied)

This is the portion of the Statement of Principles upon which the respondent relied when it urged to the court, in support of its exception to the original libel, that the Decisions of the Maritime War Emergency Board had no application.

The court, after concluding from respondent's Exhibit K that authority was granted to modify the libelants' rights, follows Decision No. 5, Revised, and grants to the men war bonus for the homeward bound voyage on the GRIPSHOLM under the terms of that decision (Aps. 34), making it clear that the court, relied entirely upon Decision No. 5, Revised, of

the Maritime War Emergency Board. And yet, if the court had read that decision, we can not see how it can completely ignore the provisions of that decision, dated Feb. 21, 1942, that would have no retroactive application if the subject matter was covered by a prior agreement. It provides:

> "This Decision is retroactive to December 7, 1941, *in all cases where there was no agreement with respect to the making of payments provided for herein contained in ship's Articles entered into on or before January 23, 1942*, in the case of payments provided for in Articles 1 to 3, inclusive, hereof, February 6, 1942, in the case of payments provided for in Article 4 hereof, and February 21, 1942, with respect to payments provided for in Article 6 hereof." (Aps. 281)

Article 6 of this Decision is the one which specifically concerns the payment during internment. By virtue of this provision, no part of the decision applies as there was an agreement in the ship's articles prior to Jan. 23, 1942, in fact, prior to Dec. 7, 1941, the earliest date the decision could apply.

In other words, by the terms of this Decision itself the agreement of the libelants and the respondent as contained in the ship's articles was specifically excluded from its effect.

This argument by the appellants to the binding effect of collective bargaining agreements, referred to in Exhibit K, and the portion of Maritime War Emergency Board Decision No. 5, excluding its application where the matter was covered in the ship's articles, is no waiver by the appellants of their position that neither of these documents are admissible in evidence

under the general rules of evidence relating to contracts. It is called to this court's attention to show that even if these documents were admissible, by the very terms of the documents themselves, they have no application to the situation at bar.

By way of resume, we have this situation: The pleadings make no reference whatever to the extraneous matters, or allege any modification of the agreement. Therefore, by all the rules of pleadings, such evidence would not be admissible. Despite this, they are admitted by the court. Upon the admission of such extraneous matter, a contract, which without this extraneous matter is clear in its terms, becomes confused, because of the attempt of the court to consider this extraneous matter. Confusion is then confounded and the court loses sight of the substance of the improperly admitted evidence, the extraneous matter, and arrives at a decision contrary to the provisions of the erroneously admitted evidence.

The court was correct in its statement that this case could be decided within the principles of contract law. There is no ambiguity or uncertain terms in the rider and the supplemental agreements, and the fact that these contracts concern seamen and shipping articles does not affect the application of the ordinary rules of contract and evidence. As a matter of fact, a more liberal interpretation on behalf of seamen is required under the usual rules relating to controversies between seamen and the vessel.

Shipping articles are mercantile documents, and are entitled to liberal construction, in order to accomplish the purpose the parties had in mind. They

are not to be scrutinized as if they were legal pleadings.

United States v. Westwood (C.C.A. Va.) 266 Fed. 696.

The articles, being prepared by a master, should be construed liberally in favor of the seaman.

The Catalonia (D.C. Va.) 236 Fed. 554.

The construction most favorable to the seaman will be adopted in the case of ambiguity, uncertainty or obscurity in shipping articles.

Jansen v. Theodore Heinrich, Fed. Cases 7215.

Wope v. Hemmingway, Fed. Cases, 18042.

The Disco, Fed. Cases, 3922.

Even without these liberal rules of construction, the intention of the parties can be clearly ascertained from the written agreements signed by the parties. There is nothing in these agreements of a technical nature which requires interpretation. These agreements were prepared to express the intention of men of ordinary intelligence and their full intention can be ascertained from the shipping articles.

The admissibility of any evidence other than these agreements violates the parol evidence rule that all prior negotiations both oral and written, merge in the written agreement. Subsequent evidence is not admissible to change an agreement, unless the parties to the agreement have agreed to the subsequent changes or have specifically authorized other persons to make changes on their behalf. Certainly when such alleged subsequent changes result in a reduction of

the benefits to the parties to the original agreement, the existence of such authority will be critically examined.

The District Court had in mind, as appears from the record, the question of the authority of the union to make changes in the original agreement. While recognizing the question, the court overlooked the burden of proof cast upon the party who seeks to establish such authority to make subsequent changes. The mere fact of union membership is no such authority, and does not give the union officials the right to modify the agreement to the detriment of the men covered by the particular agreement. The rule is set forth in 31 Am. Jur. 874.

> "Sec. 102. *Modification of Contract.*—It has been ruled that agreements between organizations of employees and their employers are not designed to place it within the power of the organization to change or modify the contract at pleasure, so as to affect injuriously the individual rights of its members thereof secured by the agreement. This ruling is predicated upon the theory that the officers of labor unions are not to be deemed the agents of the members, so as to be able to affect their individual rights. Nor is the submission of questions involving such rights contemplated by the agreement of members of a union to comply with its rules and regulations and with the will of the lawfully constituted majority."
>
> 31 Am. Jur. 874, citing *Piercy v. Louisville &N. R. Co.*, 198 Ky. 477, 248 S.W. 1042, 33A.L.R. 322.

Our own Circuit Court has adopted this rule, hold-

ing that there can be no modification of working agreements by union officials, unless there has been express authorization to make such modification, and the burden of establishing such authorization is upon the person alleging the same.

> "Whatever may have been the custom of the respondent in dealing with the other seamen and other fishermen on other occasions, and in other seasons, could not be binding upon the libelants who were not shown to have participated in similar dealings. * * *
>
> "It must be shown that they were aware of the agreement before their conduct can be construed as a ratification of previously unauthorized agreement. The evidence does not show such knowledge."
>
> *Ahlquist et al. v. Alaska-Portland Packers' Ass'n.* (C.C.A. 9) 39 F.(2d) 348, 350.

In a question involving the application of an union agreement or by-laws to deprive an individual of certain rights against his employer, the court, in *The Henry S. Grove* (D.C. Md.) 22 F.(2d) 444, held this could not be done without express authorization or acceptance by the employee. In that case, however, the respondent sought to establish compensation insurance by reference to the by-laws of the local union of which libelant was a member.

> "But, even assuming that libelant's local did attempt by formal action of a majority of its members to bind them all to the agreement of the parent organization, the evidence as to which is by no means satisfactory, still the court does not think that libelant could thus be deprived of such a substantive right. An intention so to do will

not be presumed. *Burke v. Monumental Div. No. 52, B. of L. Engineers* (D.C.) 273 Fed. 707." (p. 446)

Let us examine the evidence objected to by the appellants, principally the exhibits, with direct relation to the issues raised by the pleadings and the rules above stated. First, we must bear in mind the date of October 11, 1941, which is the date the articles were signed and the date the written agreement between the parties was entered into.

What possible relevancy could there be to the issue here in demands submitted by the Masters, Mates & Pilots Association and the Marine Engineers Beneficial Association to the Pacific American Shipowners Association and the American Merchant Marine Institute, dated August 16, 1941 (Resp. Ex. A, Aps. 209). The Masters, Mates & Pilots and Marine Engineers and the American Merchant Marine Institute certainly are not parties to this proceeding. These demands, and we must assume from human experience that there were counter-demands and negotiations, resulted in an agreement dated Aug. 16, 1941, which was entered into between these two licensed officers associations and the two shipowners associations (Ex. B, Aps. 213).

Respondent saw fit to attach to this exhibit when it was offered in evidence an exhibit on the exhibit, identified as a letter from Admiral Land of the War Shipping Administration, to Mr. Taylor, president of the American Merchant Marine Institute, dated July 21, 1941 (Aps. 219), calling a conference in Washington, D. C., and the opening remarks of Com-

missioner McCauley (Aps. 221) at this conference. While interesting perhaps and informative, we fail to see where this exhibit could have the remotest relevancy or assist the court to determine what was the intention of the parties involved in this litigation when they signed the shipping articles in question at Portland, Oregon, on the 11th day of October, 1941.

At the same conference in Washington on August 12, 1941, the American Merchant Marine Institute and the Pacific American Shipowners Association submitted their own proposals concerning the bonus question to the licensed officers, both deck and engine room department (Ex. G, Aps. 242). If not merged into prior agreements, dated Aug. 16, 1944, certainly these proposals were merged into the agreement of the licensed officers, dated Oct. 10, 1941 (Ex. A-5, Aps. 259), which was introduced by the respondent.

The same situation is true of respondent's Exhibit H (Aps. 244), the proposals of the Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association, which was dated September 15, 1941. These were merged into the agreement which was introduced and admitted without objection as being the supplemental agreement (Ex. A-3) referred to in the articles. In this Exhibit H, the marine firemen asked for $10,000.00 insurance, they asked for bonus during internment, they asked for room rent while ashore, and made demands for a great many items which did not appear and were apparently abandoned at the time the ultimate agreement (Ex. A-3) was entered into.

Respondent's Exhibit C attached to Mullins Deposi-

tion (Aps. 223), dated August 18, 1941, is a circular letter addressed to the members of the American Merchants Marine Institute setting forth the views of Mr. Frank J. Taylor and the results of the conference theretofore held in Washington, D. C., with the licensed officers associations. We fail to see by what processes of imagination there could be anything in that letter that would be binding upon the libelants, West Coast seamen, who signed a contract approximately two months later or have any bearing on their intentions at that time.

Respondent offered and the court admitted Decision No. 80, of the National Defense Mediation Board (Ex. D, Aps. 226), which decided a specific controversy, not between any of the libelants or the respondent, but between various steamship companies and their licensed personnel represented by their unions and the Sailors Union of the Pacific, no parties to this proceeding either directly or by representation. And the result of this hearing is what? A decision? No! The board hands down certain recommendations. The board recommends certain rates of bonus in certain areas. Nowhere in this document is there one word concerning the payment of a war bonus in the event of the internment of the crew of a vessel. The dispute in the case at bar concerns only the question of the payment of the bonus during internment, not the rate at which it will be paid. That rate has been stipulated. Therefore, what is the materiality of Decision No. 80? None whatever!

Let us examine some of the documents and evidence which were introduced which came into being after

October 11, 1941. The articles signed on October 11, 1941, fix the rights of the parties thereto, unless they consent or directly delegate to others the right to subsequently modify the agreement. At the time the first of these exhibits, Resp. Ex. K (Aps. 199), the Statement of Principles, was signed, the appellants were on the other side of the world. It was the impact of the war, Pearl Harbor, an occurrence which arose after the agreement was signed, and which might fairly have been said to have been contemplated within the agreement, that brought most of these exhibits into being. The rider, dated October 11, 1941, was signed with the understanding that there was a definite risk of war, and certainly was not signed with the intention that if there was a war, the rights of the men signing such document would be diminished by delegating to others the power to make such agreements for them.

Exhibit K (Aps. 199), adopted December 17, 1941, was the one upon which the court placed such great emphasis in its decision. Despite the most strenuous objection by appellants' counsel, and even despite the argument by respondent's counsel on the point of the Wagner Labor Relations Act (Aps. 95) (which was further confusing) the court admitted this exhibit. There is not one bit of evidence in the record, other than counsel for respondent's own statement, that appellants authorized their union representatives to change their agreement after they sailed. We challenge counsel to point out evidence of such authority. The mere fact of union membership alone is not such authority. The court recognized this (Aps. 95) and

yet unfortunately assumed, without any record to support the assumption, that such authorization in fact existed. At the time of these negotiations and the adoption of the Statement of Principles, the men were at sea and in fact had already discharged part of their cargo at Manila.

This very document itself shows that it is prospective in its operation. Without waiving the right to strike, Maritime labor gives the Government assurance that the exercise of this right will be withheld for the period of the war (Aps. 199) and

> "To provide machinery for the settlement of disputes without interruption of service or stoppage of work during the period of the war and to insure the application of the maximum war effort * * *." (Aps. 200)

This exhibit also provides that the unions representing the personnel of the American Merchant Marine and the operators of those vessels have pledged themselves to cooperate wholeheartedly in the all-out war effort of the government, and to take no action during the war emergency which shall cause any interruption of the service of such vessels (Aps. 201).

Not only was there no authority within this Statement of Principles, dated December 17, 1941, to make any change in any pre-existing agreement, the agreement itself was very careful to protect the prior rights that had already been fixed as the result of agreement:

> "It is understood and agreed that all rights guaranteed to labor and industry with respect to collective bargaining will be retained and all

agreements and obligations arising as a result of collective bargaining agreements will in no way be violated." (Aps. 200)

In the light of this statement in the agreement itself, we cannot conceive how the district court made such an error. Even respondent adopted the position that this agreement did not apply when it used the above section to maintain the validity of the supplemental agreements (Resp. Ex. A-3 and A-4) to prevent an increase in the payment of the bonus set forth in those agreements on his exceptions to the original libel.

The court, having fallen into this error, then assumed that Decision No. 5, Revised (Ex. A-11, Aps. 279) applied. Again, we have the question of time involved. This decision was dated February 21, 1942, when the libelants had been in prison for almost two months. (We have already referred in our Statement of the Case to the fact that by the very terms of Decision No. 5, Revised, Exhibit A-11, all persons in possession of original Decision No. 5, and attached supplements, Exhibit A-12 (Aps. 287) were requested to destroy the same and they were to be of no effect as superseded by Decision No. 5, Revised). There is no evidence in the record where the libelants in this case, or any member of the crew of the SS CAPILLO, authorized the Maritime War Emergency Board to act for them. Even were it admissible on the theory that there was some authority, had the court read these exhibits we cannot understand how it failed to consider that portion of both decisions No. 5, either in the original form or revised form, which provided

that they were only retroactive to December 7, 1941 (yet the articles were signed on October 11, 1941), and retroactive only in those cases where there was no agreement with respect to the subject matter of Decision No. 5 prior to the 21st day of February, 1942.

> "This Decision is retroactive to December 7, 1941, in all cases where there was no agreement with respect to the making of payments provided for herein contained in ship's Articles entered into on or before January 23, 1942, in the case of payments provided for in Articles 1 to 3, inclusive, hereof, February 6, 1942, in the case of payments provided for in Article 4 hereof, and February 21, 1942, with respect to payments provided for in Article 6 hereof." (Aps. 281)

We believe that there can be no question on the conclusion that not only was there no authority to make any subsequent change, but all of the documents offered by the respondent and upon which respondent relies disclose a positive intention, by specific reference thereto, that the rights and privileges arrived at in prior agreements would not be changed or modified.

As far as Maritime War Emergency Board Decision No. 2 is concerned (Ex. A-2, Aps. 270), we have been unable to find one word therein which has any relation to the question of the payment of bonus during internment, which is the only issue here. This exhibit is wholly devoid of any materiality both as to the question of time when it was issued and in substance.

Exhibits A-5 (Aps. 259), A-6 (Aps. 265), A-7 (Aps. 266) and A-8 (Aps. 266) were supplemental

agreements with other unions than those representing the libelants. These agreements covered, respectively, the licensed deck officers, the licensed engine room personnel, the deck crew and the radio operators. None of the apellants are members of these groups. Even the respondent does not content that they had any connection with the other unions or that the unions had any authority to act for them. We might as well introduce the agreement between the longshoremen and their employers in the Port of San Francisco establishing an increase in pay and an agreement they would not strike during the war. Such agreement has a direct relationship to the war effort and is maritime in nature, but that does not make it material to the situation in the case at bar.

The only other of respondent's exhibits not discussed are Exhibit E (Aps. 231) and Exhibit F (Aps. 236), these two being supplemental agreements between the American Merchant Marine Institute, representing some of the Atlantic Coast operators, and the National Maritime Union. Exhibit E relates to the payment of war bonuses, being dated November 6, 1941, and being only the blank form of an agreement between the N.M.U. and unnamed operator. Exhibit F relates to the payment of a war bonus for a trip to Russia, also in blank form.

The appellants and all members of the crew of the SS Capillo, being West Coast men, were not only not represented by the National Maritime Union, but were in fact in conflict with that union and they were rival unions. What place do these documents have in this proceeding, and how could they be of any value in

determining the intention of the parties in the articles on the Capillo?

We do not feel it necessary to discuss the testimony of the witnesses Mullins and Bryan, as most of the testimony relates to the identity of the exhibits herein referred to. Suffice it to say that neither of these estimable gentlemen had anything to do with either the appellants or the respondent in the transaction in the signing of the articles, out of which the appellants' claim arose. While the efforts of these gentlemen in the support of the war effort by keeping labor relations of their respective associations on an even keel deserve commendation, such efforts can hardly be of assistance to the court in determining the issues involved in this proceeding.

We have not referred to the general rule that master agreements entered into between a union and an association or representatives of employers are not of themselves binding until incorporated or adopted by specific agreement between the employees and a particular employer.

> "The initial agreement itself acquired no legal force until the parties directly and immediately concerned contracted with reference to it. Until closed by specific acceptance on the part of the parties so concerned, the agreement remained incomplete. *Rentschler v. Missouri Pac. R. Co.*, 126 Neb. 493, 253 N.W. 694, 95 A.L.R. 1; 31 Am. Jur. 872, Labor, §97.
>
> *Clark v. Claremont Apt. Hotel Co.*, 19 Wn. (2d) 115, 122, 123, 141 P.(2d) 403.

The reason therefore is that no question has been

raised, either by the pleadings or by counsel on the application of the supplemental agreement, which is the only general agreement which is effective in the case at bar (Exhibit A-3 and A-4). Respondent has stipulated to this fact. We feel that the reference to such cases is not necessary in view of the fact that there are not other collective bargaining *agreements* between the union and members of the crew involved in these proceedings other than the two agreements mentioned.

The appellants recognize that a trial court, sitting in admiralty, has a wide latitude in the admission or rejection of evidence, but even within this latitude the rules of relevancy and materiality must be followed. These rules must be applied with relation to the particular issues before the court. That the court committed error in permitting the evidence objected to to be introduced, we feel, is clearly apparent.

CONCLUSION

This is a contract, as set forth in the libel, which is made up of three documents, and no more; the shipping articles including the rider, Exhibit A-3, supplemental agreement for the engine room department, covering Steeves, Calgan and Porter, and Exhibit A-4, the Marine Cooks and Stewards supplemental agreement covering Taylor. The intention of the parties, as set forth in these documents, is clear. They provide for the payment of bonus during internment.

The facts are admitted: that no bonus was paid to the men during their period of interment. The judgment should be reversed, with instructons to enter a decree in favor of each appellant for the payment of bonus at the rate of $80.00 per month from the 29th day of December, 1941, to the 7th day of December, 1943, the date of their arrival on a Pacific Coast port after leaving New York, and $125.00 for each appellant, the stipulated value of the transportation from New York to the Pacific Coast.

Respectfully submitted,

SAM L. LEVINSON,
Proctor for Appellants.

APPENDIX

[Title of District Court and Cause]

ASSIGNMENTS OF ERROR (Aps. 54 to 72)

The appellants, Edward J. Steeves, Hugo Calgan, William A. Porter and Samuel S. Taylor, hereby assign as error in the proceedings, decree, orders and decision of the District Court in the above entitled action, as follows:

(1) The District Court erred in entering Finding of Fact III upon the grounds that such finding is immaterial and irrelevant to the issue, and there was no competent evidence to support said finding.

(2) The District Court erred in entering Finding of Fact IV on the grounds that said finding is immaterial and irrelevant, and there is no competent evidence to support said finding.

(3) The District Court erred in entering Finding of Fact V upon the grounds that such finding is immaterial and irrelevant to the issue, and that there is no competent evidence to support said finding.

(4) The District Court erred in entering Finding of Fact VI, on the grounds that said finding is immaterial and irrelevant.

(5) The District Court erred in entering Finding of Fact VII, on the grounds that said finding is immaterial and irrelevant.

(6) The District Court erred in entering Finding of Fact VIII, on the grounds that said finding is immaterial and irrelevant.

agreements (Aps. 170), and that subsequent negotiations did take place.

Mullins further testified (Aps. 170) that on September 22, 1941, another conference was called by telegraphic request from Admiral Land to Mr. F. A. Taylor, President of the Institute (Aps. 171). Apparently it was never held. Shortly after the receipt of the telegram calling the conference, a dispute between the Seafarers International Union and the companies with which it was negotiating was certified to the National Defense Mediation Board. (The respondent American Mail Line was not one of the companies.) A hearing was had by the Board on this certification and the decision was handed down, identified as Decision No. 80, and offered in evidence in this proceeding as respondent's Exhibit D (Aps. 172) and admitted by the court (Aps. 209).

Respondent's Exhibit D was a copy of the decision of the National Defense Mediation Board (Aps. 226) and followed hearings which were held September 29 and October 1, 2, 3, and 4, 1941. The date which this decision was handed down does not appear in the record. This decision set forth certain recommended bonus rates for defined war areas. Mr. Mullins further testified (Aps. 172) that the copy offered in evidence was not a true copy in that it did not contain a statement on the original in his file that the representatives of the shipowners agreed to urge those whom they represented to accept these recommendations, and that the representatives of the Sailors Union of the Pacific agreed to urge those that they represented to accept its recommendations, and the representa-

tives of th Seafarers International Union, though not fully in accord with the recommendations, agreed to carry them back to the union membership and explain to them why they should accept it (Aps. 173).

Respondent's Exhibit "D" also contained the provision (Aps. 231) that nothing in the recommendations should be so interpreted as to reduce benefits now existing under collective bargaining contracts. There is not a word in this exhibit relating to the payment of war bonus during internment. Appellants' challenge that this exhibit had absolutely no materiality or relevancy and did not concern any of the parties to this case at bar was overruled and the exhibit was admitted (Aps. 209).

Mullins further testified (Aps. 174) that commencing in September, 1941, the Institute, on behalf of some 23 or 24 of its member companies (in which the respondent was not represented) was in negotiation with the National Maritime Union for the renewal of current collective bargaining agreements. (The National Maritime Union, an east coast union, is a bitter opponent of the west coast unions). These negotiations culminated in an agreement dated November 6, 1941, after the vessel on which the libelants were employed had been at sea for some nineteen days. This resulted in the development of a standard form of contract signed by all of the member companies of the institute which had recognized the NMU as the agent for collective bargaining for their unlicensed personnel (Aps. 175).

This standard form of contract was identified as respondent's Exhibit E (Aps. 231), and although the

appellants again objected concerning the relevancy of this document signed after the rider to the articles in question, and between parties who had no connection with any of the parties interested in this litigation, the objection was overruled and the document was admitted (Aps. 209).

Mullins further testified that there was a further supplemental agreement entered into between the National Maritime Union and various companies, members of the Institute, which was negotiated on December 2, 1941, relating to bonus for a voyage to Russia (Aps. 176). This exhibit is in blank form and set out on page 236 of the Apostles on Appeal, and was identified as respondent's Exhibit F, and despite continued objections by appellants concerning its materiality and relevancy the same was admitted in evidence by the courts (Aps. 209).

Under questioning by counsel for respondent, Mullins testified that the National Maritime Union agreements remained in effect until the establishment of the first Maritime War Emergency Board. Respondent's Exhibit B (Aps. 176), the agreement with the licensed officers, was subsequently superseded by the agreements heretofore referred to as Exhibits A-5 and A-6, although Mullin testified there was no other agreement (Aps. 178), only some recommendations by the commission.

Mullins also testified concerning the negotiations between his Institute and the American Communications Association, which never materialized in a contract (Aps. 178) until after the matter was referred

to an arbitrator named by the United States Department of Labor (Aps. 179) in February, 1942.

This witness also brought out the fact that the NMU is a union which represents all departments of unlicensed personnel on the vessels on the Atlantic coast (Aps. 180), and although the Seafarers International Union represented some of the unlicensed personnel, no agreement existed between the American Merchant Marine Institute and the Seafarers International Union covering war bonus in the fall of 1941.

The witness Mullins discussed the exhibits heretofore identified in his deposition (Aps. 181) and brought out the fact that there were some differences in some of the contracts prior to the fall of 1941 (Aps. 181) concerning payment of bonus during internment and the contracts were not standardized as far as the Atlantic and the Gulf were concerned for the licensed personnel until August, 1941, and for the unlicensed personnel until November and December, 1941. He thought that his association and negotiations set the pattern, generally speaking, for the labor agreements on the Atlantic and Pacific Coast (Aps. 182), and testified concerning his meaning of the words emergency compensation and war bonus (Aps. 184, 185). Appellants objected to all of the testimony of the witness Mullins, which objection was overruled and the court admitted this testimony (Aps. 159).

J. B. Bryan testified on behalf of respondent in the form of answers to written interrogatories to which the appellants objected (Aps. 159) upon the

ground the questions and answers were not material. His testimony was that the Pacific American Shipowners Association of which he was president was formed in 1936, and acted in labor relation matters with seafaring unions; that commencing in 1939 collective bargaining agreements contained certain war bonus provisions; that confusion arose because of separate agreements entered into by various companies and rivalry between Pacific and Atlantic unions (Aps. 189), resulting in a series of conferences held in Washington, D. C., where uniform agreement for licensed and unlicensed personnel was entered into.

The witness Bryan participated in these negotiations. He identified written demands made by two unions, Exhibit G (Aps. 242). He also identified and testified to counter-proposals, dated August 12, 1941, made by the Pacific American Shipowners Association and the American Merchants Marine Institute to the demands of the two unions representing the licensed personnel. This exhibit was admitted in evidence over libelants' objection (Aps. 241).

The Pacific Coast Marine Firemen, Oilers & Watertenders Association also made a proposal as to what they considered fair on the question of war bonus, and this proposal was dated September 15, 1941 (Aps. 244), and this proposal was identified as respondent's exhibit H, and admitted over libelants' objection. The witness Bryan also identified respondent's Exhibit I (Aps. 250), which was the proposal submitted by the Sailors Union of the Pacific, dated September 16, 1941, supported by the reasons which that organization felt should prevail. This was also

admitted (Aps. 241) over appellants' objections as to the materiality. Finally, he identified respondent's Exhibit J (Aps. 255), which was a letter written by S. J. Hogan, president of the National Marine Engineers' Beneficial Association, under date of October 24, 1941, directed to Frank J. Taylor, President of the American Merchant Marine Institute and calling Mr. Taylor's attention to the fact that the August 16, 1941, war risk agreement with his organization, entered into on the Pacific Coast, and the supplemental agreement (A-6) were not alike. Although the appellants had great difficulty in seeing the materiality of such a document to the issues involved in the case at bar, and called the same to the court's attention by appropriate objection, it was admitted in evidence (Aps. 241).

The witness Bryan also identified the same documents testified to by the witness Mullins in his deposition, the demands made by the Radio Operators Association, the demands made by the Sailors Union of the Pacific, and the hearing in Case No. 80 before the National Defense Mediation Board, which hearing was held in October, 1941. He identified the dates upon which the supplementary agreements were entered into between the Pacific Shipowners Association and the six unions representing the sea-going personnel (Respondent's Exhibits A-3, A-4, A-5, A-6, A-7 and A-8). He was also interrogated concerning certain communications between his association and the American Merchant Marine Institute concerning the language in the contracts and fortunately, from the standpoint of the record, could testify to no other

communications other than Exhibit J, which had theretofore been introduced.

This witness also testified that there had never been any protest to his knowledge (Aps. 198) from either his association, the American Merchant Marine Institute, or any of the six Pacific Coast maritime unions to the Maritime War Emergency Board protesting or criticizing the action of the Board in adopting the rule laid down in Article 6 of Decision No. 5, Revised, of Maritime War Emergency Board, dated February 21, 1942, limiting the period of the payment of war bonus. This was introduced by the respondent apparently to show that there was no protest by the appellants, who at the time the decision was announced, had already been prisoners of the Japanese in some prison camp in the Orient for approximately two months and remained such prisoners until repatriated.

The Court announced its decision (Aps. 32) that it could not ascertain the intention of the parties without reference to all of the evidence admitted, and concluded that because the unions to which the libelants were members approved the Statement of Principles (Resp. Ex. K), that the action of the unions in subscribing to this Statement of Principles constituted libelants' consent to be bound by the decision of the Maritime War Emergency Board, and therefore followed the rulings of that board in not allowing a war bonus during internment, despite the provision of the shipping articles. Findings of fact and decree in accordance with the decision was entered. This appeal followed.

SPECIFICATIONS OF ERROR RELIED UPON

The cause of action set forth in the libel is based on written shipping articles executed October 11, 1941, between respondent and appellants. The articles contain a rider which provides for the payment of war bonus in accordance with the applicable supplementary agreements, during internment of the crew. Three of the appellants being members of the Pacific Coast Firemen, Oilers, Watertenders & Wipers Association, the applicable supplemental agreement is Exhibit A-3, dated October 9, 1941. The remaining appellant, being a member of the Pacific Coast Marine Cooks and Stewards Association, the applicable supplemental agreement is Exhibit A-4, dated October 10, 1941. By these supplemental agreements the bonus rate is $80.00 per month.

Evidence of negotiations, conferences and agreements prior to October 11, 1941, are merged into the agreement and are not admissable. Evidence of negotiations, conferences, and agreements, occurring subsequent to October 11, 1941, between unions, of which none of the appellants are members, and shipowners associations of which respondent is not a member, and decisions of administrative boards and tribunals formed after December 7, 1941, with quasi-judicial powers, are not admissible in this proceeding, and are not binding on appellants.

Findings of Fact, Conclusions of Law and the Decree based upon such improper evidence are erroneous. As all of the assigned errors are based upon the admission of evidence over the objection that such evidence is not material or relevant to the issues, and

the findings of fact made in accordance therewith, appellants will discuss them all under one heading.

The specified Assignments of Error relied upon by appellants appear in the record as follows:

Assignments of Error 1 to 10, inclusive (Aps. 54, 55), relating to Findings of Fact III to XII, inclusive (Aps. 37-40).

Assignment of Error 11 (Aps. 55) relating to Conclusions of Law I, II and III (Aps. 49).

Assignments of Error 12 and 13 (Aps. 56) relating to the entry of the Decree (Aps. 50).

Assignment of Error 14 (Aps. 56) relating to the admission, over appellants' objection, of Respondent's Exhibit K (Aps. 199).

Assignment of Error 15 (Aps. 58) relating to the admission, over appellants' objection, of Respondent's Exhibit A-5 (Aps. 259).

Assignment of Error 16 (Aps. 58) relating to the admission, over appellants' objection, of Respondent's Exhibit A-6 (Aps. 265).

Assignment of Error 17 (Aps. 59) relating to the admission, over appellants' objection, of Respondent's Exhibit A-7 (Aps. 266).

Assignment of Error 18 (Aps. 59) relating to the admission, over appellants' objection, of Respondent's Exhibit A-8 (Aps. 266).

Assignment of Error 19 (Aps. 59) relating to the admission, over appellants' objection, of Respondent's Exhibit A-10 (Aps. 270).

Assignment of Error 20 (Aps. 60) relating to the

admission, over appellants' objection, of Respondent's Exhibit A-11 (Aps. 279).

Assignment of Error 21 (Aps. 61) relating to the admission, over appellants' objection, of Respondent's Exhibit A-12 (Aps. 287).

Assignment of Error 22 (Aps. 62) relating to the admission over appellants' objection, of Exhibit "A," Mullins Deposition (Aps. 209).

Assignment of Error 23 (Aps. 63) relating to the admission over appellants' objection, of Exhibit "B," Mullins Deposition (Aps. 213).

Assignment of Error 24 (Aps. 63) relating to the admission, over appellants' objection, of Exhibit "C," Mullins Deposition (Aps. 223).

Assignment of Error 25 (Aps. 64) relating to the admission, over appellants' objection, of Exhibit "D," Mullins Deposition (Aps. 226).

Assignment of Error 26 (Aps. 66) relating to the admission, over appellants' objection, of Exhibit "E," Mullins Deposition (Aps. 231).

Assignment of Error 27 (Aps. 66) relating to the admission, over appellants' objection, of Exhibit "F," Mullins Deposition (Aps. 236).

Assignment of Error 29 (Aps. 67) relating to the admission, over appellants' objection, of Exhibit "G," Bryan Deposition (Aps. 242).

Assignment of Error 30 (Aps. 67) relating to the admission, over appellants' objection, of Exhibit "H," Bryan Deposition (Aps. 244).

Assignment of Error 31 (Aps. 68) relating to the

admission, over appellants' objection, of Exhibit "I," Bryan Deposition (Aps. 250).

Assignment of Error 32 (Aps. 68) relating to the admission, over appellants' objection, of Exhibit "J," Bryan Deposition (Aps. 255).

Assignment of Error 33 (Aps. 69) relating to the admission, over appellants' objection of the testimony of the witness Mullins (Aps. 160-187).

Assignment of Error 34 (Aps. 69) relating to the admission, over appellants' objection, of the testimony of the witness Bryan (Aps. 187-198).

The Assignments of Error relied upon are set forth in full in the Appendix to this brief.

ARGUMENT ON THE ASSIGNMENTS OF ERROR

The cause of action set forth in the libel is based on written shipping articles executed October 11, 1941, between respondent and libelants. The articles contain a rider which provides for the payment of war bonus in accordance with the applicable supplementary agreements during internment. Three of the appellants, being members of the Pacific Coast Firemen, Oilers, Watertenders & Wipers Association, the applicable supplemental agreement is Exhibit A-3, dated October 9, 1941. The remaining appellant, being a member of the Pacific Coast Marine Cooks & Stewards Association, the applicable supplemental agreement is Exhibit A-4, dated October 10, 1941. By the terms of these supplemental agreements, the bonus rate is $80.00 per month. Evidence of negotiations, conferences and agreements prior to October 11, 1941, are merged into the agreement and are not admissable. Evidence of negotiations, conferences, and agreements, occuring subsequent to October 11, 1941, between unions, of which none of the appellants are members, and shipowners associations of which respondent is not a member, and decisions of administrative boards and tribunals formed after December 7, 1941, with quasi-judicial powers, are not admissible in this proceedings, and are not binding on appellants. Findings of fact, conclusions of law and the decree based upon such improper evidence are erroneous.

In the case at bar there are no disputed questions of fact. The libel is a simple action on a contract of employment as evidenced by the shipping articles and the attached rider. The rider, agreed to by respondent and the members of the crew, including the appel-

lants, men of ordinary intelligence, provides (1) for the payment of a war bonus, and reads as follows:

> "The American Mail Line agrees to pay an emergency war bonus to the crew of the SS CAPILLO, Voyage Six (6), in accordance with the provisions contained in the applicable supplementary agreements in effect between the Pacific American Shipowners' Association and the various Marine Unions.",

(2) the possibility of internment or imprisonment as a result of war, and for payment in the event of such contingency and the length of the payment as follows:

> "In the event the vessel and/or crew be interned, imprisoned, hospitalized or put ashore due to war causes and for that reason, be unable to continue their voyage, the company agrees to pay *wages and bonus* to the date members of the crew arrive in an United States port, on the Pacific Coast; furthermore, the company agrees, in such event, to arrange for repatriation of such men to an United States port on the Pacific Coast. Also that the company be liable for any injuries suffered by any crew member due to war causes." (Italics supplied)

The vessel and the crew knew that there were pending negotiations where the question of increase of compensation and war bonus might be considered, and so they covered that by providing:

> "It is further agreed that in the event of any *increase in pay, overtime or war bonus* or changes in insurance which may be granted, as the result of negotiations between Union and the Pacific American Shipowners' Association, the Company will be governed by the terms and ef-

fective date of any agreement so reached." (Italics supplied)

Thus it appears that the only place where the rider is not complete is that portion which relates to the amount of the bonus or the rate at which it is to be paid. In order to determine that, the parties to this agreement referred to the applicable supplemental agreements which were in effect or about to go into effect at that time between unions representing the men and the Pacific American Shipowners' Association. The one covering the three appellants who were members of the engine room crew is Respondent's Exhibit A-3, dated October 9, 1941, between the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association and the Pacific American Shipowners Association. The one covering the other appellant is Respondent's Exhibit A-4, which is the agreement between the Pacific Coast Marine Cooks & Stewards Association and the Pacific American Shipowners Association, dated October 10, 1941.

In the agreement between the Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association and the Pacific American Shipowners Association (Ex. A-3, Aps. 114) the union adopts and makes effective certain recommendations of the National Defense Mediation Board, and agrees on the establishment of five war risk zones, and provides for a war risk bonus at the rate of $80.00 per month on four of these zones, which includes the voyage in question. This supplemental agreement is silent on any question of internment or destruction of the ship due to war causes. This agreement applies to the appellants

Steeves, Calgan and Porter, who were members of the engine room department.

Exhibit A-4, the agreement between the Pacific Coast Marine Cooks & Stewards Union and the Pacific American Shipowners Association, was dated October 10, 1941, and sets forth the same areas and rate of bonus as in Exhibit A-3. However, this agreement has additional provisions which set forth the machinery relating to future adjustments, provides for the carrying of war risk insurance in the sum of $5000.00, and specifically provides for the payment of a war bonus in the event of internment or destruction of the vessel while the employees are in the war zones defined.

It is, therefore, apparent that these two agreements supply the missing data in the articles, that is, the rate of bonus. While Exhibit A-4 affecting one appellant goes further and makes provision for the payment of war bonuses in the event of internment, it is apparent that the parties, having definitely agreed in writing in the rider on the length of time war bonus would be paid in the event of internment, did not intend to vary this portion of the agreement by the incorporation of contrary or other provisions in the supplemental agreements.

> "A written instrument must ordinarily be interpreted to mean what on its face it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense."
>
> 12 Am. Jur. 751.

"Where a contract as a whole discloses a given

intention, they will be interpreted, if possible, so as to be consistent with the general intent."

12 Am. Jur. 774.

The foregoing statements support the fundamental rule that when the parties to an agreement have contracted with reference to a particular situation, the length of time for payment of the war bonus, a reference to another document for another purpose will not defeat such intention.

While it will be admitted that it may be possible to raise some argument on the Marine Cooks & Stewards agreement covering the appellant Taylor in that there was provision both in the rider and the supplementary agreemnt relating to the length of time that war bonus is paid. common experience would indicate that this could not have been the intent of the men in the light of the specific provision in the rider which was known to them when they signed and when the terms of the supplementary agreement were then as yet unknown.

This is particularly true when it is borne in mind that the issues presented in this case are not between the unions as such and the Pacific American Shipowners Association or its representative, but the issues here are between the four members of the crew of the SS CAPILLO and the respondent operator of the vessel. It was the men who had agreed upon the length of time for which the bonus would be paid in the event of internment and that was until the men returned to the Pacific Coast. They had not, however, as yet agreed on the rate, and therefore it was

necessary that they refer to the supplemental agreement to determine the rate.

Here then we have the completed contract. The contract fixed the compensation to be paid for the considered risk arising out of a voyage into war zones and the length of time such compensation was to be paid in the event of a materialization of the hazard, the destruction of the vessel and imprisonment of the crew. The men sailed, leaving the haven of the Pacific Coast waters on October 21, 1941. The men faithfully carried out their duties without complaint and brought the vessel and its cargo into waters which they had good cause to believe, before sailing, would be dangerous and hazardous. They had contracted to do so, and that was all there was to it.

The calculated risk which all parties considered materialized. The ship was attacked, destroyed and the crew was captured by the enemy, and they were imprisoned on December 29, 1941. They became prisoners of war, all normal communication with home was cut off, and the men took what comfort they could while suffering imprisonment from the knowledge and belief that upon their return to the Pacific Coast of the United States, whenever that might be, they would be paid not only their wages for operating the vessel, but the additional compensation of wages and war bonus as partial compensation for the hazards, the suffering and the anguish during long months of imprisonment. These were hazards which the men were not required to assume, and assumed only because the respondent was anxious to secure a crew for this voyage (Lintner, Aps. 102), and to send

the vessel and its cargo into these waters for the payment of such war freight rates as the conditions demanded. These men had no way of knowing that any changes were made or would be made in what they believed would be their pay when they returned to the United States.

Finally came the great day of repatriation, after many heart-breaking delays and postponements, and then when they are at last returned to the soil of the United States, they are met at the dock by a representative of the steamship company for the purpose of payment, and then for the first time they are advised that they will receive their wages while on the vessel and during such time as they were in prison, but that their war bonus, which each libelant believed the respondent had agreed to pay, would not be paid.

The respondent, remaining adamant in its position concerning the payment of war bonus during the period of internment, there was no other alternative but to bring an action on the contract.

Although throughout this discussion the payment has been referred to as 'war bonus," it is nevertheless wages for services performed under extraordinary conditions and must be treated as such.

"War bonuses" are additional wages paid to the crew members to induce them to accept employment. Such bonuses are treated as wages, and are supported by a valid consideration.

> "There can be no question but that the 'so-called' war bonus was additional wages for extra hazardous service. It was awarded as a result of a demand for increased wages, and was paid

for services rendered, and for nothing else. To call a portion of such wages a 'war bonus' does not alter its essential character."

Lokos v. Saliaris (The Leonidas) (C.C.A. 2) 116 F.(2d) 440, 442.

The added risk assumed is a valid consideration. If the vessel becomes unseaworthy during the voyage, a contract for a bonus to induce the seaman to assume the added risk, instead of taking his discharge, rests on a good consideration.

The Jacob Luckenbach (Dt. Ct. La.) 36 F. (2d) 381.

The steamship company agreement to pay crew members extra wages for sailing a vessel from Hampton Roads, to which it returned after leaving the convoy because of unseaworthiness, was valid.

The Louise (D.C. Maryland) 54 F. Supp. 157.

Where the crew signed on a vessel under a 100% bonus arrangement for a trans-Atlantic voyage, and the voyage terminated at South Carolina because of the condition of the vessel, it was held that the seamen were, nevertheless, entitled to their double wages.

The Herbert L. Rawding (D.C. So. Car.) 55 F. Supp. 156, 161.

Despite the attempt of the respondent to treat the war bonus as something other than wages, as a "bonus" or gratuity, it is apparent even from the cross-examination of the witness Mullins (Aps. 186) that the payment of these war bonuses was compensation for the risk which the men assumed by reason of the war hazard.

The position of respondent admits to an attempt to reduce the wages by the incorporation of other agreements. Such attempt is contrary to the satutory provision relating to shipping articles which require that the rate of wages be set forth at the time the men sign on.

46 U.S.C.A. 564.

In interpreting this section of the statute, it has been held that a provision of the shipping articles providing that the wages named were subject to change in accordance with a new schedule to be adopted by the shipowners was held to be invalid as not complying with the statute requiring the articles to state the wages to be paid.

Jones v. United States (D.C. Md.) 284 Fed. 721.

It has also been held that the provision of shipping articles, making any change in working rules or wages retroactive, to be applicable only to the agreement to which the seamen were actually or constructively parties, and not to an arbitrary reduction of wages. If such agreement was a fact, it would be held void because of a lack of mutuality.

The Howick Hall (D.C. La.) 10 F.(2d) 162.

It was respondent's original position that the rider and the supplemental agreements only governed the rights of the parties.

The original libel filed by the appellants alleged (par. 3, Aps. 4) that the bonus rate was increased to $100.00 per month beginning December 7th, 1941, by reason of Decision No. 2 of the Maritime War

Emergency Board dated January 11, 1942, in so far as this decision related to an increase in the bonus under the terms of the last paragraph of the rider, that the crew benefit by the increase of any war bonus as the result of negotiations. Judgment in the original libel was demanded accordingly (par. 5, Libel, Aps. 5). The respondent filed exceptions to the libel on the ground: first, that all reference to the Maritime War Emergency Board Decisions must be stricken as having no application (Aps. 9) and; in the alternative, if it be held by the Court that Decision No. 2 of the Maritime War Emergency Board applied, then Decision No. 5 must also apply.

Respondent urged in its argument on the exceptions, and supported by a brief filed in the court below in support of these exceptions, that

> "The increase in bonus provided by Decision No. 2 was clearly the result of a decision by the Board, who after consideration fixed the amount of bonus payable. It was not the 'result of negotiations.' The last bonus fixed as a result of negotiations was the $80.00 per month provided in the October, 1941, collective bargaining agreements. The Statement of Principles specifically provides that such agreements 'will not be violated' by Board Decisions. The reference to Decision 2 must be stricken."

Although this excerpt from respondent's brief does not appear in the record, we do not believe the respondent will challenge its accuracy, and it is cited only to show respondent's position in its argument on the exceptions.

The exceptions filed by the respondent to the orig-

inal libel were sustained (Aps. 5). No appeal having been taken by the libelants from the court's ruling on the exception, it becomes the law of the case, and an amended libel was filed.

The amended libel eliminated all reference to the Maritime War Emergency Board Decisions, and asked for recovery on behalf of the libelants at the rate set forth in the supplemental agreemnts, those of October 9 and October 10, 1941. Respondent answered (Aps. 22), admitting practically all of the amended libel, except that it was indebted to the libelants.

In the respondent's affirmative defense, it alleged the execution of the articles, the negotiations and the execution of agreements between the Pacific Marine Firemen, Oilers, Watertenders & Wipers and the Marine Cooks and Stewards Association of the Pacific and the Pacific American Shipowners Association on behalf of respondent (Exhibits A-3 and A-4). The answer set forth the definition of the war risk areas as defined in these agreements, referring to the Pacific area as Area 4 (Aps. 28) as all points west of the 180th Meridian. Respondent's answer quoted the provision of the Marine Cooks & Stewards agreement (Ex. A-4, Aps. 29), providing for the payment of the bonus in the case of internment:

> "In the event a vessel is interned, destroyed or or abandoned as a result of war operations and is unable to continue her voyage, * * *. War bonuses at the rates specified in subdivision (b) of paragraph 1 hereof shall be paid while employees are in the war zones defined herein * * *." (Aps. 29)

Respondent's answer sets forth that it paid the war bonus at the rate specified while "the libelants were in the war zone described in paragraph 1(a) of said agreements" (Aps. 30). The later statement is contrary to the stipulated facts, as the men were paid their war bonuses only up to the time of the destruction of the vessel, December 29, 1941, although there is no question but that the men subsequently remained in the area. This point is discussed in more detail hereafter.

There is nothing in the respondent's answer by way of affirmative defense that has any reference to any of the decisions of the Maritime War Emergency Board, or in any way alleges or charges that there was any authority on behalf of any person or organization to modify the agreements as set forth in the shipping articles. The substance of the answer simply sets forth the agreement as being made up of the shipping articles and the applicable supplemental agreements and full performance by respondent.

Under these pleadings the issue seems simple—so simple, in fact, that the libelants moved for judgment on the pleadings, in so far as it was admitted by the respondent in open court that the men were paid their war bonus only up to the date of the destruction of the vessel, and as to this fact there was no dispute, which motion was denied. The trial proceeded on these issues, and at the trial, as hereinabove set forth, respondent offered all of the evidence relating to negotiations prior and subsequent to the date of the articles in question, and the supplemental agreements, although there was absolutely nothing in the plead-

ings about any modification of the agreement as set forth in respondent's answer or any claim of ambiguity.

Even the witness Lintner, general manager of respondent, understood that the rider was to be interpreted and determined by the results of the negotiations which were under way at the time (Aps. 98). These are the admitted agreements. Lintner did not mean and said nothing about the M.W.E.B. decisions upon which the court decided the case.

Appellants objected strenuously to the introduction of all of this evidence upon the ground that it had no materiality. The court permitted its identification upon the promise by the respondent that it would be tied up and its materiality and relationship shown, and later admitted it all.

In an attempt to consider this mass of evidence and to follow the theory of the respondent, the court became confused, and finally admitted its confusion by stating:

> "This is one of the most involved cases I ever saw. That is a condition resulting directly from the war situation and from the desire of citizens, particularly those connected with the maritime industry, to cooperate with the war effort, even to the exclusion of their clear understanding of employer-employee relations.
>
> "It is the opinion of the court, however, that this case may be solved within the principles of contract law." (Aps. 32, 33)

The court then completely abandoned these principles, when it stated that to ascertain the intention of the parties from the articles and the two supple-

mental agreements, it was necessary to add the explanatory matter contained in the other evidence received by the court (Aps. 33).

The court wholly overlooked the provision in the rider signed by the men relating to the payment of bonus during internment, a specific provision covering a specific situation. It further overlooked the fact that in the first supplemental agreement, Exhibit A-3, the one covering the engine room personnel, the appellants Steeves, Calgan and Porter, that there was no provision whatever relating to the payment of bonus during internment. Further, the court assumed the fact that in the Marine Cooks & Stewards the payment of bonus during internment, the paragraph set forth in respondent's answer applied to both agreements—when in fact it was not the case. Respondent urged that the payments are limited to a "voyage."

This paragraph provided for the payment of a bonus to the men while in the war zone. Nothing is said about any voyage; nothing said about any services on the vessel. It simply provided that in the event of destruction of the vessel or the abandonment of the voyage, not only basic wages and emergency wages were to be paid, but war bonus was to be paid to the employees while they were in the war zones defined (Aps. 124). There is no dispute that during all of the period of their internment, until the men were homeward bound on the SS GRIPSHOLM and crossed the 180th Meridian, the men were continuously west of the 180th Meridian, placing them in the defined war zone.

By way of answer to the question which was in the court's mind concerning the authority conferred by the appellants to any person to modify or change their agreement subsequent to their signing of the articles, the court concluded that the various maritime unions had authority to act for the appellants and therefore could later modify the individual agreements; that these unions, by subscribing to the Statement of Principles (Ex. K), consented to be bound by the Decision of the Maritime War Emergency Board and thereby bound appellants. It is very difficult to understand how the court could arrive at this conclusion, because the Statement of Principles itself (Aps. 199), upon which the court based this conclusion, contained the following provision:

> "It is understood and agreed that all rights guaranteed to labor and industry with respect to collective bargaining will be retained and *all agreements and obligations arising as a result of collective bargaining agreements will in no way be violated.*" (Aps. 200) (Italics supplied)

This is the portion of the Statement of Principles upon which the respondent relied when it urged to the court, in support of its exception to the original libel, that the Decisions of the Maritime War Emergency Board had no application.

The court, after concluding from respondent's Exhibit K that authority was granted to modify the libelants' rights, follows Decision No. 5, Revised, and grants to the men war bonus for the homeward bound voyage on the GRIPSHOLM under the terms of that decision (Aps. 34), making it clear that the court, relied entirely upon Decision No. 5, Revised, of

the Maritime War Emergency Board. And yet, if the court had read that decision, we can not see how it can completely ignore the provisions of that decision, dated Feb. 21, 1942, that would have no retroactive application if the subject matter was covered by a prior agreement. It provides:

> "This Decision is retroactive to December 7, 1941, *in all cases where there was no agreement with respect to the making of payments provided for herein contained in ship's Articles entered into on or before January 23, 1942*, in the case of payments provided for in Articles 1 to 3, inclusive, hereof, February 6, 1942, in the case of payments provided for in Article 4 hereof, and February 21, 1942, with respect to payments provided for in Article 6 hereof." (Aps. 281)

Article 6 of this Decision is the one which specifically concerns the payment during internment. By virtue of this provision, no part of the decision applies as there was an agreement in the ship's articles prior to Jan. 23, 1942, in fact, prior to Dec. 7, 1941, the earliest date the decision could apply.

In other words, by the terms of this Decision itself the agreement of the libelants and the respondent as contained in the ship's articles was specifically excluded from its effect.

This argument by the appellants to the binding effect of collective bargaining agreements, referred to in Exhibit K, and the portion of Maritime War Emergency Board Decision No. 5, excluding its application where the matter was covered in the ship's articles, is no waiver by the appellants of their position that neither of these documents are admissible in evidence

under the general rules of evidence relating to contracts. It is called to this court's attention to show that even if these documents were admissible, by the very terms of the documents themselves, they have no application to the situation at bar.

By way of resume, we have this situation: The pleadings make no reference whatever to the extraneous matters, or allege any modification of the agreement. Therefore, by all the rules of pleadings, such evidence would not be admissible. Despite this, they are admitted by the court. Upon the admission of such extraneous matter, a contract, which without this extraneous matter is clear in its terms, becomes confused, because of the attempt of the court to consider this extraneous matter. Confusion is then confounded and the court loses sight of the substance of the improperly admitted evidence, the extraneous matter, and arrives at a decision contrary to the provisions of the erroneously admitted evidence.

The court was correct in its statement that this case could be decided within the principles of contract law. There is no ambiguity or uncertain terms in the rider and the supplemental agreements, and the fact that these contracts concern seamen and shipping articles does not affect the application of the ordinary rules of contract and evidence. As a matter of fact, a more liberal interpretation on behalf of seamen is required under the usual rules relating to controversies between seamen and the vessel.

Shipping articles are mercantile documents, and are entitled to liberal construction, in order to accomplish the purpose the parties had in mind. They

are not to be scrutinized as if they were legal pleadings.

United States v. Westwood (C.C.A. Va.) 266 Fed. 696.

The articles, being prepared by a master, should be construed liberally in favor of the seaman.

The Catalonia (D.C. Va.) 236 Fed. 554.

The construction most favorable to the seaman will be adopted in the case of ambiguity, uncertainty or obscurity in shipping articles.

Jansen v. Theodore Heinrich, Fed. Cases 7215.

Wope v. Hemmingway, Fed. Cases, 18042.

The Disco, Fed. Cases, 3922.

Even without these liberal rules of construction, the intention of the parties can be clearly ascertained from the written agreements signed by the parties. There is nothing in these agreements of a technical nature which requires interpretation. These agreements were prepared to express the intention of men of ordinary intelligence and their full intention can be ascertained from the shipping articles.

The admissibility of any evidence other than these agreements violates the parol evidence rule that all prior negotiations both oral and written, merge in the written agreement. Subsequent evidence is not admissible to change an agreement, unless the parties to the agreement have agreed to the subsequent changes or have specifically authorized other persons to make changes on their behalf. Certainly when such alleged subsequent changes result in a reduction of

the benefits to the parties to the original agreement, the existence of such authority will be critically examined.

The District Court had in mind, as appears from the record, the question of the authority of the union to make changes in the original agreement. While recognizing the question, the court overlooked the burden of proof cast upon the party who seeks to establish such authority to make subsequent changes. The mere fact of union membership is no such authority, and does not give the union officials the right to modify the agreement to the detriment of the men covered by the particular agreement. The rule is set forth in 31 Am. Jur. 874.

> "Sec. 102. *Modification of Contract.*—It has been ruled that agreements between organizations of employees and their employers are not designed to place it within the power of the organization to change or modify the contract at pleasure, so as to affect injuriously the individual rights of its members thereof secured by the agreement. This ruling is predicated upon the theory that the officers of labor unions are not to be deemed the agents of the members, so as to be able to affect their individual rights. Nor is the submission of questions involving such rights contemplated by the agreement of members of a union to comply with its rules and regulations and with the will of the lawfully constituted majority."
>
> 31 Am. Jur. 874, citing *Piercy v. Louisville &N. R. Co.*, 198 Ky. 477, 248 S.W. 1042, 33A.L.R. 322.

Our own Circuit Court has adopted this rule, hold-

ing that there can be no modification of working agreements by union officials, unless there has been express authorization to make such modification, and the burden of establishing such authorization is upon the person alleging the same.

> "Whatever may have been the custom of the respondent in dealing with the other seamen and other fishermen on other occasions, and in other seasons, could not be binding upon the libelants who were not shown to have participated in similar dealings. * * *
>
> "It must be shown that they were aware of the agreement before their conduct can be construed as a ratification of previously unauthorized agreement. The evidence does not show such knowledge."
>
> *Ahlquist et al. v. Alaska-Portland Packers' Ass'n.* (C.C.A. 9) 39 F.(2d) 348, 350.

In a question involving the application of an union agreement or by-laws to deprive an individual of certain rights against his employer, the court, in *The Henry S. Grove* (D.C. Md.) 22 F.(2d) 444, held this could not be done without express authorization or acceptance by the employee. In that case, however, the respondent sought to establish compensation insurance by reference to the by-laws of the local union of which libelant was a member.

> "But, even assuming that libelant's local did attempt by formal action of a majority of its members to bind them all to the agreement of the parent organization, the evidence as to which is by no means satisfactory, still the court does not think that libelant could thus be deprived of such a substantive right. An intention so to do will

not be presumed. *Burke v. Monumental Div. No. 52, B. of L. Engineers* (D.C.) 273 Fed. 707." (p. 446)

Let us examine the evidence objected to by the appellants, principally the exhibits, with direct relation to the issues raised by the pleadings and the rules above stated. First, we must bear in mind the date of October 11, 1941, which is the date the articles were signed and the date the written agreement between the parties was entered into.

What possible relevancy could there be to the issue here in demands submitted by the Masters, Mates & Pilots Association and the Marine Engineers Beneficial Association to the Pacific American Shipowners Association and the American Merchant Marine Institute, dated August 16, 1941 (Resp. Ex. A, Aps. 209). The Masters, Mates & Pilots and Marine Engineers and the American Merchant Marine Institute certainly are not parties to this proceeding. These demands, and we must assume from human experience that there were counter-demands and negotiations, resulted in an agreement dated Aug. 16, 1941, which was entered into between these two licensed officers associations and the two shipowners associations (Ex. B, Aps. 213).

Respondent saw fit to attach to this exhibit when it was offered in evidence an exhibit on the exhibit, identified as a letter from Admiral Land of the War Shipping Administration, to Mr. Taylor, president of the American Merchant Marine Institute, dated July 21, 1941 (Aps. 219), calling a conference in Washington, D. C., and the opening remarks of Com-

missioner McCauley (Aps. 221) at this conference. While interesting perhaps and informative, we fail to see where this exhibit could have the remotest relevancy or assist the court to determine what was the intention of the parties involved in this litigation when they signed the shipping articles in question at Portland, Oregon, on the 11th day of October, 1941.

At the same conference in Washington on August 12, 1941, the American Merchant Marine Institute and the Pacific American Shipowners Association submitted their own proposals concerning the bonus question to the licensed officers, both deck and engine room department (Ex. G, Aps. 242). If not merged into prior agreements, dated Aug. 16, 1944, certainly these proposals were merged into the agreement of the licensed officers, dated Oct. 10, 1941 (Ex. A-5, Aps. 259), which was introduced by the respondent.

The same situation is true of respondent's Exhibit H (Aps. 244), the proposals of the Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Association, which was dated September 15, 1941. These were merged into the agreement which was introduced and admitted without objection as being the supplemental agreement (Ex. A-3) referred to in the articles. In this Exhibit H, the marine firemen asked for $10,000.00 insurance, they asked for bonus during internment, they asked for room rent while ashore, and made demands for a great many items which did not appear and were apparently abandoned at the time the ultimate agreement (Ex. A-3) was entered into.

Respondent's Exhibit C attached to Mullins Deposi-

tion (Aps. 223), dated August 18, 1941, is a circular letter addressed to the members of the American Merchants Marine Institute setting forth the views of Mr. Frank J. Taylor and the results of the conference theretofore held in Washington, D. C., with the licensed officers associations. We fail to see by what processes of imagination there could be anything in that letter that would be binding upon the libelants, West Coast seamen, who signed a contract approximately two months later or have any bearing on their intentions at that time.

Respondent offered and the court admitted Decision No. 80, of the National Defense Mediation Board (Ex. D, Aps. 226), which decided a specific controversy, not between any of the libelants or the respondent, but between various steamship companies and their licensed personnel represented by their unions and the Sailors Union of the Pacific, no parties to this proceeding either directly or by representation. And the result of this hearing is what? A decision? No! The board hands down certain recommendations. The board recommends certain rates of bonus in certain areas. Nowhere in this document is there one word concerning the payment of a war bonus in the event of the internment of the crew of a vessel. The dispute in the case at bar concerns only the question of the payment of the bonus during internment, not the rate at which it will be paid. That rate has been stipulated. Therefore, what is the materiality of Decision No. 80? None whatever!

Let us examine some of the documents and evidence which were introduced which came into being after

October 11, 1941. The articles signed on October 11, 1941, fix the rights of the parties thereto, unless they consent or directly delegate to others the right to subsequently modify the agreement. At the time the first of these exhibits, Resp. Ex. K (Aps. 199), the Statement of Principles, was signed, the appellants were on the other side of the world. It was the impact of the war, Pearl Harbor, an occurrence which arose after the agreement was signed, and which might fairly have been said to have been contemplated within the agreement, that brought most of these exhibits into being. The rider, dated October 11, 1941 was signed with the understanding that there was a definite risk of war, and certainly was not signed with the intention that if there was a war, the rights of the men signing such document would be diminished by delegating to others the power to make such agreements for them.

Exhibit K (Aps. 199), adopted December 17, 1941 was the one upon which the court placed such great emphasis in its decision. Despite the most strenuous objection by appellants' counsel, and even despite the argument by respondent's counsel on the point of the Wagner Labor Relations Act (Aps. 95) (which was further confusing) the court admitted this exhibit. There is not one bit of evidence in the record, other than counsel for respondent's own statement, that appellants authorized their union representatives to change their agreement after they sailed. We challenge counsel to point out evidence of such authority. The mere fact of union membership alone is not such authority. The court recognized this (Aps. 95) and

yet unfortunately assumed, without any record to support the assumption, that such authorization in fact existed. At the time of these negotiations and the adoption of the Statement of Principles, the men were at sea and in fact had already discharged part of their cargo at Manila.

This very document itself shows that it is prospective in its operation. Without waiving the right to strike, Maritime labor gives the Government assurance that the exercise of this right will be withheld for the period of the war (Aps. 199) and

> "To provide machinery for the settlement of disputes without interruption of service or stoppage of work during the period of the war and to insure the application of the maximum war effort * * *." (Aps. 200)

This exhibit also provides that the unions representing the personnel of the American Merchant Marine and the operators of those vessels have pledged themselves to cooperate wholeheartedly in the all-out war effort of the government, and to take no action during the war emergency which shall cause any interruption of the service of such vessels (Aps. 201).

Not only was there no authority within this Statement of Principles, dated December 17, 1941, to make any change in any pre-existing agreement, the agreement itself was very careful to protect the prior rights that had already been fixed as the result of agreement:

> "It is understood and agreed that all rights guaranteed to labor and industry with respect to collective bargaining will be retained and all

agreements and obligations arising as a result of collective bargaining agreements will in no way be violated." (Aps. 200)

In the light of this statement in the agreement itself, we cannot conceive how the district court made such an error. Even respondent adopted the position that this agreement did not apply when it used the above section to maintain the validity of the supplemental agreements (Resp. Ex. A-3 and A-4) to prevent an increase in the payment of the bonus set forth in those agreements on his exceptions to the original libel.

The court, having fallen into this error, then assumed that Decision No. 5, Revised (Ex. A-11, Aps. 279) applied. Again, we have the question of time involved. This decision was dated February 21, 1942, when the libelants had been in prison for almost two months. (We have already referred in our Statement of the Case to the fact that by the very terms of Decision No. 5, Revised, Exhibit A-11, all persons in possession of original Decision No. 5, and attached supplements, Exhibit A-12 (Aps. 287) were requested to destroy the same and they were to be of no effect as superseded by Decision No. 5, Revised). There is no evidence in the record where the libelants in this case, or any member of the crew of the SS CAPILLO, authorized the Maritime War Emergency Board to act for them. Even were it admissible on the theory that there was some authority, had the court read these exhibits we cannot understand how it failed to consider that portion of both decisions No. 5, either in the original form or revised form, which provided

that they were only retroactive to December 7, 1941 (yet the articles were signed on October 11, 1941), and retroactive only in those cases where there was no agreement with respect to the subject matter of Decision No. 5 prior to the 21st day of February, 1942.

> "This Decision is retroactive to December 7, 1941, in all cases where there was no agreement with respect to the making of payments provided for herein contained in ship's Articles entered into on or before January 23, 1942, in the case of payments provided for in Articles 1 to 3, inclusive, hereof, February 6, 1942, in the case of payments provided for in Article 4 hereof, and February 21, 1942, with respect to payments provided for in Article 6 hereof." (Aps. 281)

We believe that there can be no question on the conclusion that not only was there no authority to make any subsequent change, but all of the documents offered by the respondent and upon which respondent relies disclose a positive intention, by specific reference thereto, that the rights and privileges arrived at in prior agreements would not be changed or modified.

As far as Maritime War Emergency Board Decision No. 2 is concerned (Ex. A-2, Aps. 270), we have been unable to find one word therein which has any relation to the question of the payment of bonus during internment, which is the only issue here. This exhibit is wholly devoid of any materiality both as to the question of time when it was issued and in substance.

Exhibits A-5 (Aps. 259), A-6 (Aps. 265), A-7 (Aps. 266) and A-8 (Aps. 266) were supplemental

agreements with other unions than those representing the libelants. These agreements covered, respectively, the licensed deck officers, the licensed engine room personnel, the deck crew and the radio operators. None of the apellants are members of these groups. Even the respondent does not content that they had any connection with the other unions or that the unions had any authority to act for them. We might as well introduce the agreement between the longshoremen and their employers in the Port of San Francisco establishing an increase in pay and an agreement they would not strike during the war. Such agreement has a direct relationship to the war effort and is maritime in nature, but that does not make it material to the situation in the case at bar.

The only other of respondent's exhibits not discussed are Exhibit E (Aps. 231) and Exhibit F (Aps. 236), these two being supplemental agreements between the American Merchant Marine Institute, representing some of the Atlantic Coast operators, and the National Maritime Union. Exhibit E relates to the payment of war bonuses, being dated November 6, 1941, and being only the blank form of an agreement between the N.M.U. and unnamed operator. Exhibit F relates to the payment of a war bonus for a trip to Russia, also in blank form.

The appellants and all members of the crew of the SS Capillo, being West Coast men, were not only not represented by the National Maritime Union, but were in fact in conflict with that union and they were rival unions. What place do these documents have in this proceeding, and how could they be of any value in

determining the intention of the parties in the articles on the Capillo?

We do not feel it necessary to discuss the testimony of the witnesses Mullins and Bryan, as most of the testimony relates to the identity of the exhibits herein referred to. Suffice it to say that neither of these estimable gentlemen had anything to do with either the appellants or the respondent in the transaction in the signing of the articles, out of which the appellants' claim arose. While the efforts of these gentlemen in the support of the war effort by keeping labor relations of their respective associations on an even keel deserve commendation, such efforts can hardly be of assistance to the court in determining the issues involved in this proceeding.

We have not referred to the general rule that master agreements entered into between a union and an association or representatives of employers are not of themselves binding until incorporated or adopted by specific agreement between the employees and a particular employer.

> "The initial agreement itself acquired no legal force until the parties directly and immediately concerned contracted with reference to it. Until closed by specific acceptance on the part of the parties so concerned, the agreement remained incomplete. *Rentschler v. Missouri Pac. R. Co.*, 126 Neb. 493, 253 N.W. 694, 95 A.L.R. 1; 31 Am. Jur. 872, Labor, §97.
>
> *Clark v. Claremont Apt. Hotel Co.*, 19 Wn. (2d) 115, 122, 123, 141 P.(2d) 403.

The reason therefore is that no question has been

raised, either by the pleadings or by counsel on the application of the supplemental agreement, which is the only general agreement which is effective in the case at bar (Exhibit A-3 and A-4). Respondent has stipulated to this fact. We feel that the reference to such cases is not necessary in view of the fact that there are not other collective bargaining *agreements* between the union and members of the crew involved in these proceedings other than the two agreements mentioned.

The appellants recognize that a trial court, sitting in admiralty, has a wide latitude in the admission or rejection of evidence, but even within this latitude the rules of relevancy and materiality must be followed. These rules must be applied with relation to the particular issues before the court. That the court committed error in permitting the evidence objected to to be introduced, we feel, is clearly apparent.

CONCLUSION

This is a contract, as set forth in the libel, which is made up of three documents, and no more; the shipping articles including the rider, Exhibit A-3, supplemental agreement for the engine room department, covering Steeves, Calgan and Porter, and Exhibit A-4, the Marine Cooks and Stewards supplemental agreement covering Taylor. The intention of the parties, as set forth in these documents, is clear. They provide for the payment of bonus during internment.

The facts are admitted: that no bonus was paid to the men during their period of interment. The judgment should be reversed, with instructons to enter a decree in favor of each appellant for the payment of bonus at the rate of $80.00 per month from the 29th day of December, 1941, to the 7th day of December, 1943, the date of their arrival on a Pacific Coast port after leaving New York, and $125.00 for each appellant, the stipulated value of the transportation from New York to the Pacific Coast.

Respectfully submitted,

SAM L. LEVINSON,
Proctor for Appellants.

APPENDIX

[Title of District Court and Cause]

ASSIGNMENTS OF ERROR (Aps. 54 to 72)

The appellants, Edward J. Steeves, Hugo Calgan, William A. Porter and Samuel S. Taylor, hereby assign as error in the proceedings, decree, orders and decision of the District Court in the above entitled action, as follows:

(1) The District Court erred in entering Finding of Fact III upon the grounds that such finding is immaterial and irrelevant to the issue, and there was no competent evidence to support said finding.

(2) The District Court erred in entering Finding of Fact IV on the grounds that said finding is immaterial and irrelevant, and there is no competent evidence to support said finding.

(3) The District Court erred in entering Finding of Fact V upon the grounds that such finding is immaterial and irrelevant to the issue, and that there is no competent evidence to support said finding.

(4) The District Court erred in entering Finding of Fact VI, on the grounds that said finding is immaterial and irrelevant.

(5) The District Court erred in entering Finding of Fact VII, on the grounds that said finding is immaterial and irrelevant.

(6) The District Court erred in entering Finding of Fact VIII, on the grounds that said finding is immaterial and irrelevant.

(7) The District Court erred in entering Finding of Fact IX, except that portion of said Finding of Fact which states that supplementary agreements were entered into between the Pacific American Shipowners' Association and the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association and the Marine Cooks and Stewards Association, dated October 9, 1941, and October 10, 1941, respectively, on the grounds that said finding is immaterial and irrelevant, and not supported by competent evidence.

(8) The District Court erred in entering Finding of Fact X, upon the grounds that the same is immaterial and irrelevant, and that said finding is not supported by competent evidence.

(9) The District Court erred in entering Finding of Fact XI, upon the grounds that the same was immaterial and irrelevant, and that said finding is not supported by competent evidence.

(10) The District Court erred in entering Finding of Fact XII, except that portion of said finding which states that the respondent has paid libelants bonus at the rate of $80.00 per month from December 7, 1941, to December 29, 1941, upon the grounds that said finding is immaterial and irrelevant and not supported by competent evidence, and contains an erroneous determination of the amount due the libelants.

(11) The District Court erred in entering Conclusions of Law I, II and III.

(12) The District Court erred in entering the Decree awarding each of the libelants the sum of $288.00.

(13) The District Court erred in failing to enter a decree in favor of the libelant Steeves in the sum of $2083.67, together with interest thereon at the legal rate from December 7, 1943, in failing to enter a decree in favor of the libelant Calgan in the sum of $2083.67, together with interest thereon at the legal rate from December 7, 1943, in failing to enter a decree in favor of the libelant Porter in the sum of $2083.67, together with interest thereon at the legal rate from December 7, 1943, and in failing to enter a decree in favor of the libelant Taylor in the sum of $2083.67, together with interest thereon at the legal rate from December 7, 1943, and costs in favor of the libelants.

(14) The District Court erred in admitting in evidence respondent's Exhibit "K" over libelants' objection that the same was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

This exhibit was a document entitled "Statement of Principles," and was adopted at a conference of representatives of steamship companies and maritime unions held in Washington, D. C., December 19, 1941. This exhibit, in substance, provided that it was desirable and necessary that a uniform basis of war bonus and insurance covering the entire maritime industry be reached; that maritime labor give its assurance to the United States Government that they will not strike during the period of war; and steamship companies agree there will be no lock-out; that the utilization of collective bargaining will not be impaired by reason of any act of the conference; that all agreements and

obligations arising out of collective bargaining will not be violated; to provide machinery for the settlement of disputes without interruption of service or stoppage of work during the period of war, and to insure application of the maximum war effort; providing for the creation of a proposed maritime war emergency board with the powers set forth in Exhibit "A" attached to said exhibit. Exhibit "A" attached provides that the unions and the vessel operators, having pledged themselves to co-operate in the war effort, it is of importance that means shall be established to insure that questions that may arise which are likely to interrupt the war effort, shall be settled promptly.

Under present conditions, in order to afford a procedure for settling questions relating to war risk compensation and insurance it is proposed there shall be established a board to be known as the Maritime War Emergency Board, which shall consist of three members named by the President. Disputed questions of war risk compensation shall be referred to the Board, and upon notice and hearing, its decision shall be final. Advisory committees of steamship operators and unions are set up. Pursuant to this agreement, on December 19, 1941, President Roosevelt appointed John R. Steelman, Edward Macauley and Frank P. Graham to constitute the Maritime War Emergency Board.

(15) The District Court erred in admitting in evidence respondent's Exhibit "A-5" over libelants' objection that the same was immaterial and irrelevant.

Libelants' objection was overruled and exception allowed.

Respondent's Exhibit "A-5" was a document dated October 10, 1941, being a supplementary agreement between the Master, Mates and Pilots Association, West Coast Local 90 (representing licensed deck officers), and the Pacific Shipowners Association. This agreement designated the war areas and provided for payment to members of the Masters, Mates and Pilots Union of war bonus, at designated rates, and for the payment of bonus during such time as the members of the union were in the war zone. None of libelants were members of this union.

(16) The District Court erred in admitting in evidence respondent's Exhibit "A-6" over libelants' objection that the same was immaterial and irrelevant. Libelants' objection was overruled and exception allowed.

Respondent's Exhibit "A-6" was a document dated October 15, 1941, being a supplementary agreement between the Marine Engineers Beneficial Association (the union representing the licensed engineer officers), and the Pacific Shipowners Association. This agreement designated the war areas and provided for the payment of the war bonus, at designated rates, and for the payment of bonus during such time as the members of the Association were in the war zone. None of the libelants were members of this Association.

(17) The District Court erred in admitting in evidence respondent's Exhibit "A-7" over libelants' objection that the same was immaterial and irrelevant.

Libelants' objection was overruled and exception allowed.

Respondent's Exhibit "A-7" was a document dated October 16, 1941, being a supplementary agreement between the American Communications Association representing the radio operators and the Pacific Shipowners Association. This agreement designated the areas and provided for the payment of the war bonus, at designated rates, and for the payment of bonus during such time as the members of the Association were in the war zone. None of libelants were members of this association.

(18) The District Court erred in admitting in evidence respondent's Exhibit "A-8" over libelants' objection that the same was immaterial and irrelevant. Libelants' objection was overruled and exception allowed.

Respondent's Exhibit "A-8" was a document dated October 9, 1941, being a supplementary agreement between the Sailors' Union of the Pacific and the Pacific Shipowners' Association. This agreement designated the war areas and provided for the payment of war bonus during such time as the members of the S. U. P. were in the war zone. None of the libelants were members of the S. U. P.

(19) The District Court erred in admitting respondent's Exhibit "A-10" over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

Respondent's Exhibit "A-10" was a copy of Decision No. 2 of the Maritime War Emergency Board, dated January 10, 1942, containing classification of

bonus areas and the rate of bonus. Six classifications were established with appropriate bonus rates, and also providing for the payment of certain port bonuses. Nothing in this exhibit relates to the payment of bonus during internment.

(20) The District Court erred in admitting respondent's Exhibit "A-11" over libelants' objection that it was immaterial and irrelevant, which objection was overruled, and exception allowed.

This exhibit is Decision No. 5 Revised of the Maritime War Emergency Board, dated February 1, 1942, requesting that all persons in possession of the previous Decision No. 5, and the supplements hereinafter referred to as Respondent's Exhibit "A-12," destroy the same, and this revised Decision No. 5 sets forth the new procedure whereby the owner or operator of the vessel shall pay the dependents of seamen during internment the amounts which have been allotted to said dependents. This Revised Decision No. 5 provides that it is retroactive to December 7, 1941, in all cases where there was no agreement with respect to the payments provided for or contained in the ship's articles entered into on or before February 21, 1942, with respect to payment of bonus during internment, or where the making of such payments was expressly left open subject to a later agreement either in the ship's articles or collective bargaining. This decision substantially follows Exhibit "A-12" in that it sets forth the procedure of payment of wages to either the members of the crew or their dependents during the period of internment, and provides similarly that war bonus shall continue from the time of the loss of the

vessel until the seaman arrives at the port where he is no longer exposed to marine perils, and is subject to the retroactive provisions hereinabove set forth.

(21) The District Court erred in admitting respondent's Exhibit "A-12," to which libelants objected on the ground that the same was immaterial and irrelevant, which objection was overruled, and exception allowed.

Exhibit "A-12" was denominated Maritime War Emergency Board Decision No. 5, and supplements. This exhibit sets forth the procedure whereby an owner or operator of a vessel, sunk by enemy action, shall pay to the seaman, or his dependents, wages and allotments during internment of the seaman. It defines certain classes of dependents which shall receive such allotment in the event no allotment has been made by the seaman. Supplement dated February 6, 1942, provides that the Decision shall be retro-active to December 7, 1941, and further provides that the seaman shall have the right to agree with the ship owner that such seaman shall be paid wages during the period of internment, through the medium of the American Red Cross, or other governmental agency. Amendment to Decision No. 5, also part of this exhibit, dated February 17, 1942, re-states that Decision No. 5 clearly covers vessels in the American Merchant Marine which are sunk or damaged by enemy action, or the destruction of such vessel by any of the United Nations. This amendment sets forth that the Board has given consideration to the continuance of bonus in case of destruction of the vessel, which subject was not covered by Decision No. 5, and adds a number of articles to

Decision No. 5, designating the same as Article No. 6, and providing that where such vessel is lost as the result of enemy action, the war bonus shall continue at the rate which prevailed immediately before loss until the seaman arrives at a port where he is no longer exposed to marine perils. This further provides, however, that the provision of the supplement to Decision No. 5 providing that the terms of the decision shall be retro-active to December 7, 1941, shall be applicable only where there was no agreement with respect to the making of payments provided for or contained in the ship's articles entered into on or before January 10, 1942.

(22) The District Court erred in admitting in evidence respondent's Exhibit "B," Mullins' Deposition over objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

Exhibit "A," Mullins' Deposition, was a written proposal by the Masters, Mates and Pilots Association and the Marine Engineers' Beneficial Association, submitted to a conference called by the United States Maritime Commission and the Department of Labor in July and August, 1941, between the American Merchant Marine Institute, representing the Atlantic coast vessels, and the Pacific-American Shipowners' Association, representing the Pacific coast vessels, and the two unions above referred to. This proposal sets forth their demands for bonus in various war areas and the proposed war risk insurance policies covering their members.

(23) The District Court erred in admitting in evidence respondent's Exhibit "B," Mullins' Deposition, over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

This exhibit was the agreement entered into on August 16, 1941, between the Marine Engineers' Beneficial Association and the Masters, Mates and Pilots Association and the American Merchant Marine Institute and the Pacific American Shipowners' Association covering the proposed bonuses and wages for the war risk areas defined therein. This exhibit also included a copy of a letter from Admiral Land to Mr. Frank J. Taylor, President of the American Merchant Marine Institute, dated July 22, 1941, calling a conference. The exhibit further included the opening remarks by Admiral McCauley to the members of the conference at the time of their meeting on August 12, 1941, and a request by them to further the war effort.

(24) The District Court erred in admitting Exhibit "C," Mullins' Deposition, over libelants' objection that it was immaterial and irrelevant. This objection was overruled, and exception allowed.

This exhibit was a form letter from the Secretary of the American Merchant Marine Institute, dated August 18, 1941, addressed to its members, advising them of the result of the meetings with the Masters, Mates and Pilots and Marine Engineers, and the negotiations and agreements entered into between them.

(25) The District Court erred in admitting Exhibit

"D," Mullins' Deposition, over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

This exhibit is a copy of the decision of the National Defense Mediation Board Decision No. 80 of hearings held on September 29th and October 1st, 2nd, 3rd and 4th, 1941, in which the American Merchant Marine Institute, Pacific American Ship-owners Association, Waterman Steamship Corporation, parties on the one side, and the Seafarers' International Union of N. A. and the Sailors' Union of the Pacific were opposing parties. This resulted in certain recommendations by the Board, which, in substance, were as follows: That the crews of American vessels perform an essential role in the national war effort, and that a number of named shipping companies are associated in the American Merchant Marine Institute and the West Coast companies are associated in the Pacific American Shipowners' Association, and the Waterman Steamship Company is not affiliated with either group; that the unlicensed personnel are represented by the S. I. U. and the S. U. P.; that collective bargaining relationships have been established by most owners and one or another of the unions, and for the negotiation of general contract the parties have worked out among themselves appropriate methods. However, a special problem arises from the risk run by men who go to sea in time of war, and it was with this problem that the recommendations are concerned. To cover the bonus which would be fair under present conditions and provide machinery for equitable future bonus, if conditions change, the National Defense

Mediation Board recommends, until changed, bonus rules based on five war risk areas as defined therein, with a further provision that able-bodied seamen shall be paid a bonus of $80.00 per month in the first four areas and $33.00 a month in the fifth area. The fourth area covers the trans-Pacific route. Provision is also made for port attack bonuses. The Board further recommends the following machinery for making equitable future adjustment: Any signatory may ask for a change, such request to be made in writing to the other party for whom change is sought, and if an agreement is not reached within one week, the matter be referred to the United States Department of Labor, Division of Conciliation; if not then determined, it may be referred to a Board composed of three members appointed by the President, and such Board shall have power to make recommendations. It further provides that the recommendations relating to the bonus areas shall be effective to November 1, 1942, and that an amendment to November 1, 1943, and during this period there shall be no strike. It is further set forth that nothing in these recommendations shall be interpreted to reduce benefits now existing under collective bargaining contracts, and all the recommendations shall become effective on ships that sail after August 16, 1941, or any earlier effective date set by special rider. If any dispute arise as to the interpretation or recommendations and the parties cannot adjust that dispute by collective bargaining, either party may avail themselves of the arbitration conciliation provisions provided in the recommendations.

(26) The District Court erred in admitting Exhibit "E," Mullins' Deposition, over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

This exhibit is a blank form of supplementary agreement between the National Maritime Union and the name of the company left in blank, bearing date November 6, 1941, which set forth the bonus areas and the rates of bonus.

(27) The District Court erred in admitting Exhibit "F," Mullins' Deposition, over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

This exhibit is a supplementary agreement in blank between the National Maritime Union and unnamed companies, bearing date December 12, 1941, concerning bonus areas and bonus rates.

(28) The District Court erred in admitting respondent's Bryan Deposition-Exhibits "A," "B" and "D" over libelants' objection that the same was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

Bryan Deposition-Exhibits "A," "B" and "D" are the same documents heretofore referred to as Mullins' Deposition-Exhibits "A," "B" and "D," respectively.

(29) The District Court erred in admitting in evidence Bryan Deposition-Exhibit "G" over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled and exception allowed.

This exhibit was the written counter-proposal, dated August 12, 1941, made by the Pacific American Shipowners' Association and American Merchant Marine Institute to the demands of the two unions representing the licensed personnel, which negotiations and conference resulted in a contract heretofore referred to as Respondent's Exhibit "B." These proposals defined the various war risk areas and the bonuses to be paid, and provided for a $5000.00 war risk insurance for loss of life. This proposal suggested the payment of wages during the period of internment until the officer arrives at a Continental United States port.

(30) The District Court erred in admitting in evidence Bryan Deposition-Exhibit "H" over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

Bryan Deposition-Exhibit "H" was the war bonus proposal of the Pacific Coast Marine Firemen, Watertenders and Oilers' Association, dated September 15, 1941, setting forth proposed war bonus areas and the rates to be paid in those areas, requesting war risk insurance, and requesting payment of wages and bonuses in the event of internment until the men arrived at a continental United States port. Requests were also made for insurance on personal effects and for certain meal benefits while awaiting transportation.

(31) The District Court erred in admitting in evidence Bryan Deposition-Exhibit "I" over libelants' objection that it was immaterial and irrelevant. Li-

belants' objection was overruled, and exception allowed.

This exhibit is a copy of a letter from the Sailors' Union of the Pacific, dated September 10, 1941, directed to the Pacific American Shipowners' Association, setting forth their reasons for a proposed amendment to the current war bonus provisions and submitting certain bonus demands covering particular areas, including a request for the payment of bonus until the member of the union is returned to a home port, and also requesting certain war risk insurance on personnel and property of personnel, as well as increased wages by reason of carrying war cargo.

(32) The District Court erred in admitting in evidence Bryan Deposition-Exhibit "J" over libelants' objection that it was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

This exhibit is a letter from the Marine Engineers' Beneficial Association, dated October 24, 1941, directed to the American Merchant Marine Institute, calling attention to certain differences in the bonus provisions in the agreements entered into on the Atlantic Coast between the Marine Engineers' Beneficial Association and the American Merchant Marine Institute and the Pacific American Shipowners' Association on the Pacific Coast.

(33) The District Court erred in admitting the testimony of the witness Mullins by deposition over libelants' objection that the same was immaterial and irrelevant. Libelants' objection was overruled, to which libelants excepted, and exception allowed.

The witness Mullins testified that he was secretary of the American Merchant Marine Institute which is composed of vessel operators of the Atlantic Coast, and that as such he participated in and identified the documents hereinabove referred to in connection with the negotiations conducted between the American Merchant Marine Institute and the National Maritime Union, such negotiations taking place prior to the execution of the shipping articles and rider under which the libelants were employed. The witness also identified and testified concerning the letters written by the American Merchant Marine Institute to its members advising them of the result of the negotiations. He identified National War Labor Mediation Board Decision No. 80, and testified concerning the hearings.

(34) The District Court erred in admitting in evidence the testimony of the witness J. B. Bryan by deposition over libelants' objection that the same was immaterial and irrelevant. Libelants' objection was overruled, and exception allowed.

The witness Bryan testified that the Pacific American Shipowners' Association, formed in 1936, acted in labor relations matters between its members and seafaring unions; that commencing in 1939, collective bargaining agreements contained special settlement of war bonus; that because of confusion arising between separate agreements entered into by the various companies following a series of conferences held in Washington, D. C., a uniform agreement with the unions representing the licensed personnel was entered into. Bryan participated in these negotiations,

which were preceded by written demands made by these two unions, which he identified and which were admitted as above set forth. He also identified the same documents testified to by William Mullins in his deposition. He identified the written demands made by the Radio Operators Association, and demands made by the Sailors' Union of the Pacific dated September 16, 1941. He testified concerning the hearing in Case No. 80 before the National Defense Mediation Board covering the general subject matter of war risk and war bonus, which hearing was held in October, 1941, and which resulted in certain written recommendations by the Board. He identified the dates upon which supplementary agreements were entered into between the Pacific Shipowners' Association and the six unions representing sea-going personnel, and testified concerning communications between the Pacific Shipowners' Association and the American Merchant Marine Institute about the possible differences in the language of the contracts, and identified a letter dated October 24, 1941, referred to in Bryan Deposition-Exhibit "J" concerning such differences.

EDWARD J. STEEVES,
HUGO CALGAN,
WILLIAM A. PORTER,
SAMUEL S. TAYLOR,
Appellants,

By SAM L. LEVINSON,
Their Proctor.

[Endorsed]: Filed June 15, 1945.